

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
 - the prohibition on 'political' advertising;
 - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
 - gambling, dating and 'message board' material where these are broadcast as advertising³.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² The relevant legislation can be found at Part 4A of the Act.

³ BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

It is Ofcom's policy to describe fully television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast and On Demand Bulletin may therefore cause offence.

Note to Broadcasters and On Demand Service Providers

Monitoring of diversity and equal opportunities in broadcasting

Introduction

In February we published a summary for broadcasters in Ofcom's Broadcast and On Demand bulletin¹, explaining our planned next steps for carrying out the television monitoring exercise and an update on the radio monitoring exercise. This note provides an update on the status of **stage one** of the television monitoring exercise and further detail on **stage two**. We are also highlighting the recent publication of Ofcom's overview of planned work on diversity and equality in broadcasting in 2018/19 and inviting radio broadcasters who did not meet the threshold for our diversity questionnaire to tell us about the diversity initiatives in their organisations.

Monitoring of the television industry

Stage one information request

On 21 February we sent out an initial information request to television broadcasters which you will have received if you told us last year that your employees totalled **50 or under** or you are a new licensee. The stage one information request asked for information related to your number of employees and the number of days you are licensed to broadcast per year, to identify whether you are required to complete a full questionnaire at stage two (see below). This request was sent to company secretaries by post and to licence contacts by email. The questionnaire took the form of an online survey, accessed via a link, included as part of the email sent to licence contacts.

On March 5 you would have received a reminder email to complete the survey, if it was still outstanding. The deadline for completion was 7 March. If you failed to submit the requested information by the deadline, we will be investigating your compliance and we may find you in breach of your licence.

Stage two information request

If you identified at stage one as meeting the relevant thresholds², or you informed us last year that you have **over 50 employees**, you will receive the stage two information request in April. This request will be sent to company secretaries by post and to licence contacts by email.

If you are required to complete the stage two information request then your licence contact will be sent a letter by email drawing their attention to the upcoming information request and including a reminder about your obligations under the General Data Protection Regulation, which applies from 25 May, and related UK legislation³.

¹ Issue number 347

² Have more than 20 employees and licensed to broadcast for more than 31 days per year.

³ <https://ico.org.uk/>

The stage two information request will consist of a detailed questionnaire asking about your equal opportunities arrangements and your workforce, which will need to be completed and returned to Ofcom. The questionnaire will take the form of an online survey, accessed via a link, included as part of the email sent to licence contacts. You will have 10 weeks to complete the survey.

How will the information be used?

We will use the information to produce our second annual diversity and equal opportunities in television report in Autumn 2018.

Publication of overview of Ofcom's work on diversity and equality

Ofcom is undertaking a range of work in 2018 which relates to diversity in broadcasting. On 14 February we published an overview of our work in this area due to be carried out in 2018/19 ([see here](#)).

Monitoring of the radio industry

Ofcom is writing its first report into diversity and equal opportunities in the radio industry. In January we sent our full diversity questionnaire to all those radio broadcasters who met the threshold⁴. Like the TV report, this will give us an overview of diversity across the industry and highlight initiatives that individual broadcasters have in place, to promote equal opportunities within their organisations.

We are also keen to capture good examples of diversity schemes and initiatives from those radio broadcasters who did not meet the threshold. If you would like to be considered for inclusion in our report, we are inviting you to send an outline, in less than 100 words, of what diversity looks like in your radio station. Please send this to diversityinbroadcasting@ofcom.org.uk by Monday 9 April 2018.

Any broadcasters who have questions related to this note please contact diversityinbroadcasting@ofcom.org.uk

Finally, we would like to remind you that it is your responsibility to ensure that your contact details held by Ofcom are accurate and up-to-date. Therefore, if this isn't the case, we ask that you email Broadcast.Licensing@ofcom.org.uk with your correct contact details.

⁴ Have more than 20 employees and licensed to broadcast for more than 31 days per year.

Election programming

On 3 May 2018, local (and mayoral¹) elections will be taking place in parts of England.

Ofcom reminds all broadcasters of the rules for election-related programming. In particular, broadcasters should ensure that they comply with Sections Five (Due Impartiality)² and Six (Elections and Referendums)³ of the Code, as well as the prohibition on political advertising contained in section 321 of the Communications Act 2003 and reflected in Section 7 of the BCAP Code.

Following the removal⁴ of the concept of larger parties from our rules and to help broadcasters to take editorial decisions during election campaigns, we have published⁵ an annual digest of past electoral and current support ahead of the elections taking place on 3 May 2018. This also sets out the factors we consider when making decisions on election-related programming, including putting more weight on evidence of past electoral support, than evidence of current support (e.g. opinion polls).

The rules in Section Six of the Code will apply when the "election period" commences. In the case of the English local (and mayoral) elections being contested on 3 May 2018, this period begins on 27 March 2018.

Ofcom will consider any breach arising from election-related programming to be potentially serious and will consider taking appropriate regulatory action, which could include the imposition of a statutory sanction.

If a complaint is made which raises a substantive due impartiality issue during the election period and in Ofcom's opinion the complaint, if upheld, might require redress before the election, it will be considered by Ofcom's Election Committee⁶. In these cases, it will be

¹ In Hackney, Lewisham, Newham, Sheffield City region, Tower Hamlets and Watford.

² See https://www.ofcom.org.uk/data/assets/pdf_file/0008/100115/broadcast-code-april-2017-section-5.pdf Ofcom's published Guidance to Section Five can be found at https://www.ofcom.org.uk/data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf

³ See https://www.ofcom.org.uk/data/assets/pdf_file/0009/100116/broadcast-code-april-2017-section-6.pdf Ofcom's published Guidance to Section Six can be found at https://www.ofcom.org.uk/data/assets/pdf_file/0034/99178/broadcast-code-guidance-section-6-march-2017.pdf

⁴ On 22 March 2017, Ofcom published its Statement (see https://www.ofcom.org.uk/data/assets/pdf_file/0030/98148/Due-impartiality-and-elections-statement.pdf) amending its rules in the areas of due impartiality, due accuracy, elections and referendums. In the Statement, we set out our decision to remove the concept of larger parties from Section Six of the Code and Ofcom's rules on Party Political and Referendum Broadcasts.

⁵ See https://www.ofcom.org.uk/data/assets/pdf_file/0017/112094/Evidence-of-past-electoral-support-and-evidence-of-current-support-ahead-of-the-English-local-and-mayoral-elections-taking-place-on-3-May-2018.pdf

⁶ See Ofcom Election Committee's Terms of Reference <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/election-committee/terms-of-reference/>

necessary for Ofcom to act quickly to determine the outcome in a proportionate and transparent manner before the election, and broadcasters should be prepared to engage with Ofcom on short timescales.

For further information about the elections being contested on 3 May 2018, broadcasters should visit the Electoral Commission website at www.electoralcommission.org.uk

If broadcasters would find it helpful to discuss the rules in Sections Five and Six of the Code, they can contact Ofcom (adam.baxter@ofcom.org.uk or natalie.rose@ofcom.org.uk).

Broadcast Standards cases

In Breach

Phone-in programme

Radio Ikhlas, 7 September 2017, 15:50

Introduction

Radio Ikhlas is a community radio station serving the Asian (primarily Pakistani) community and other smaller ethnic communities in the Normanton area of Derby. Its key commitments¹ in its community radio licence include providing a platform to promote improved local integration, the facilitation of discussion and the expression of opinion and the better understanding of the particular community and the strengthening of links within it. The licence for this station is held by Radio Ikhlas ("Radio Ikhlas" or "the Licensee").

Ofcom received a complaint that the above programme included statements that constituted "hatred" against the Ahmadiyya community. The Ahmadi movement identifies itself as a Muslim movement, which follows the teachings of the Qur'an. However, it is regarded as heretical by orthodox Islam since they differ on the interpretation of the finality of prophethood. There are Ahmadiyya communities around the world. They face restrictions in many Muslim countries and are described in publicly available reports as one of the persecuted communities in Pakistan². There have been reports of discrimination and threats against the community in the UK³.

We requested an independent translation of the material and gave the Licensee an opportunity to comment on the accuracy of the translation. The Licensee did not raise any concerns about the accuracy of this translation, so we relied on it for the purposes of this investigation.

This two-hour programme featured a presenter receiving phone calls from listeners and discussing current affairs. The majority of the programme dealt with the on-going crisis surrounding the treatment of the Rohingya Muslim community in Myanmar. In the middle of the programme, there was a 21-minute segment, which commenced with the presenter referring to the fact that the programme was being broadcast on the anniversary of 7

¹ <http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000011.pdf>

² <https://www.reuters.com/article/us-pakistan-election-ahmadis/pakistans-long-persecuted-ahmadi-minority-fear-becoming-election-scapegoat-idUSKBN1DG04H>;
http://news.bbc.co.uk/1/hi/world/south_asia/8711026.stm;
<https://www.dawn.com/news/1302057/mob-besieging-ahmadi-place-of-worship-in-chakwal-dispersed-by-police>

³ <https://www.thetimes.co.uk/article/mosques-on-guard-over-death-threats-from-muslims-5t7hq9l0t>;
http://www.huffingtonpost.co.uk/entry/kill-ahmadis-leaflets-found-in-stockwell-green-mosque-in-south-london_uk_570b5ea6e4b0ae22c1dff607

September 1974. This was the day on which the Pakistani National Assembly voted on a Bill and Constitutional Amendment declaring Ahmadi people to be non-Muslim⁴.

“Today is the 7th of September. Praise Allah, on this day the Glorious Allah exposed those who were cutting the roots of Islam in the name of Islam – those who were cutting the roots of Muslims. Their face was made explicit in front of the world. These people stigmatised the name of Islam. They were using the name of Islam and deceiving Muslims. Even today, the enemies of Muslims are within the Muslim ranks and we will have to identify them within our ranks. Remember that the greatest damage to Islam and Muslims has been done by these hypocrites who frequently engage in propaganda to defame Muslims by using various means such as by using propaganda and by engaging in propaganda against Muslim countries. Today is the 7th of September. On the 7th of September, after a parliamentary debate, they were officially declared non-believers in the land of Pakistan. They were declared non-believers because these people”.

The presenter made the following other statements:

“There is a group which tried to elevate its chief, its leader, to the status of apostolate; they tried to burgle the hallmark of apostolate and they said: No. Our chief, in whom we believe, is the last prophet. He is the last prophet...Then there was a debate in the [Pakistani] Parliament and these people were officially declared non-Muslim. The Leader of the Muslim Nation, Maulana Shah Ahmad Noorani Siddiqui, may Allah bless him, debated in the [Pakistani] Parliament for three to three and a half hours. And then, based on the parliamentary discussion, they were officially declared as non-Muslims because there were written contents available, written by them, in which they had shown that they were enemies of Islam, enemies of Pakistan, and enemies of our religion. It was these people. Therefore, they were Allah, today is the 7th of September. On the 7th of September, praise Allah, the respected Islamic scholars eliminated this and then they were declared non-Muslims in front of the entire world”.

“On this day, on the 7th of September 1974, on the 7th of September 1974, praise Allah, the fullest efforts of the revered scholars had effect and they were officially declared non-Muslims and non-believers”.

“If today a Muslim, a fake Muslim still calls himself a Muslim, then surely what is he trying to do? It is like taking a bottle of Zamzam water⁵ – with a label stating: Zamzam water – and filling it with a filthy thing such as alcohol. Will any Muslim tolerate this? You have written Zamzam water on the bottle and you are selling alcohol in it. Everyone will stop him. Everyone will call him bad. Likewise, they did the same thing. They called themselves Muslims and in their hearts they called their leader the last prophet, saying: ‘He is our last prophet. Therefore, you need to recognize them. They enter your ranks, the ranks of naïve Muslims living in the UK and Europe”.

⁴ <http://www.pakistani.org/pakistan/constitution/amendments/2amendment.html>

⁵ A water source in Mecca whose water is considered holy and attributive of medicinal properties.

“The Grand Mufti⁶ of Pakistan, Munir-ur-Rehman, the source of elevation and blessings, says: We do not tolerate one who sells alcohol in a bottle of Zamzam water and uses the name Zamzam water. Then how can we tolerate one who uses the title Muslim which represents Muslims? Remember, these are the people who are dangerous. And these people try these days too, especially in African countries which are poor countries, to go there and preach to naïve people. They try to establish themselves where poor and destitute people live – people of low level. And they rob them of their faith. Remember, there is a type of burglary that, God forbid, may happen in mine and your home – may Allah protect us. In this world, you may receive compensation for this kind of burglary. But if one’s faith is stolen. This is what they try to do. Protect yourself from them. And you need to know what their beliefs are. Today, I shall speak a bit about their beliefs, as regards what they used to say and what is their opinion about the Holy Qur’an...Likewise he used to say: ‘The Holy Qur’an is the book of Allah but its verses are what came out of my mouth. It is the word of my mouth. There is no power and recourse other than Allah’. Such a dangerous belief he had. And it went to the extent that in the book, Reality of the Revelation, he states on page 89⁷: ‘God said: “Many thrones descended from the heavens for the prophets. And my throne was placed on top of these thrones”’. Who is saying this? Their chief leader is saying this. Such a dangerous belief it is. These are a few samples of the Qadiani religion spoken by this liar, the liar in whom they believed. It is essential for us to understand this about him. Remember that a Muslim can choose to die rather than sell one’s faith... Such a dangerous belief he had that, despite being human, he said that he was pure of mistakes the way the prophets are pure from sins. He used to say that he was a prophet”.

“The reason for which I am telling this to you is that they have very dangerous beliefs, they are the enemies of Islam, and one needs to identify them [as such]. The Glorious Allah has revealed to me that whoever has received my invitation and yet refuses to accept me is not a Muslim. He states that one who has heard his calling and yet refuses to accept his claim that he is Allah’s prophet, one who does not believe in him, is not a Muslim. He says it. It is a very dangerous belief”.

“Therefore, he is a liar; he is a liar and this shows in his own books. Their religion, their faith consists of these filthy beliefs which shatter the true faith and promote untruths. This is a brief sample. Because of these filthy beliefs of the Qad – this group – and everything including believing that he was a prophet, they are officially banned in various Muslim countries and they are not allowed to call themselves Muslims. In other countries, they call themselves Muslims and thus appear as such”.

The presenter did not refer explicitly to the Ahmadiyya community, or their leader, Ahmad. However, we were satisfied that the broadcast was about the Ahmadiyya community and

⁶ Mufti is an Islamic judge who has the religious qualifications to be able to issue a fatwa.

⁷ The presenter refers to “a book which belongs to them [i.e. Ahmadi people]: Reality of the Revelation”.

that the target audience, which is primarily Pakistani, would have understood this. This is because the presenter began the segment by referring to the anniversary of the vote in the Pakistani National Assembly, declaring Ahmadi people non-Muslim, and then went on to discuss the beliefs of the Ahmadiyya community, including that their founder, Mirza Ghulam Ahmad, is a prophet. We considered that listeners would have been familiar with the vote, the nature of Ahmadi people's beliefs and that orthodox Islam regards them as heretical. The Licensee has not challenged in its representations that the broadcast segment was about the Ahmadiyya community and the beliefs of its members. We have therefore assessed this content on this basis.

We considered this material raised issues under the following rules of the Code:

- Rule 3.2: "Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context".
- Rule 3.3: "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context".
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include...discriminatory treatment or language (for example on the grounds of...religion...)".

Ofcom requested comments from the Licensee on how the programme complied with these rules.

Response

Radio Ikhlas said it "deeply regret[ted] if anyone has been hurt or upset by this broadcast". It also said that upon being alerted to this programme by Ofcom on 28 September 2017, it had suspended the presenter, a recent volunteer, and conducted an investigation into his conduct.

Radio Ikhlas also said that the presenter "normally...hosts a show every Thursday at 12pm teaching our listeners Arabic". It added that the station's "normal schedule at 3pm" is to broadcast a "nasheeds⁸ programme, which is music in various languages, including English". However, the Licensee said that on the day of broadcast in this case "the volunteer accessed the [Radio Ikhlas] building with a key that the station had provided him. At the same time, the station manager was on bereavement leave. The Licensee said that "normally" the volunteer would have informed the station manager of a change of schedule. However, in this case, neither the station manager nor "anyone else at the station [were] aware that [the volunteer] would be presenting a show at 3pm". Radio Ikhlas acknowledged that the volunteer "should not have been doing a show at that time nor should he have been broadcasting a political show".

The Licensee said that during its internal investigation, the presenter made several points which, in his view, provided contextual justification as to how the various references in the

⁸ A Nasheed is a piece of devotional vocal music that is sung either acapella or accompanied by percussion instruments.

programme to the Ahmadiyya community complied with Rules 2.3, 3.2 and 3.3. According to Radio Ikhlas, the presenter had, for example:

- pointed to the context for the discussion being a “well-documented parliamentary debate written in Pakistani history” programme that took place on 7 September 1974, when the Pakistan National Assembly declared “Qadianis as non-Muslims”. Given that the majority of listeners were of Pakistani background, he said “it was important to talk about the relevance of the day in context to Islamic history and Pakistani history”;
- said he had quoted directly from books written by the founder of the Ahmadiyya community, but did not go as far as to repeatedly mention names;
- believed he had not: used offensive language, hate speech or discriminatory language; encouraged any violence; or talked in an “aggressive manner”;
- when referring to Ahmadi people as “enemies of Islam” and “being dangerous”, said that “he was not referring to any particular general sect, as many sects have people within them that are regarded as enemies and this applies also even within Islam”; and,
- “emphasised that many of the words were metaphors...taken out of context”.

However, the Licensee said that the presenter acknowledged that some of the words he used, such as “dangerous, enemy and hypocrite” were not “suitable” and “appropriate”. It added that the presenter was “regretful that he had upset listeners and was apologetic”.

Radio Ikhlas explained that upon closure of the internal investigation, it decided to maintain the suspension of the presenter. It said that the presenter had been informed that he had “breached Ofcom’s rules...in that he has used words like dangerous, hypocrites, enemies of Islam” and that “it could easily be perceived as singling out a certain religious community”. It added that “[a] balanced view was not given to the community in discussion and no opportunity was given to the other community to put their views and points forward either in person or over the phone”.

Radio Ikhlas acknowledged that the material including the presenter’s views should not have been broadcast and “certainly would not have been approved if we had known that a contentious subject” was going to be broadcast. However, the Licensee said that it did not “believe there was any incitement towards violence”.

Commenting on what steps it had taken prior to broadcast in this case, Radio Ikhlas said that the presenter had agreed and signed Radio Ikhlas’ presenter agreement which explains Ofcom’s Code. The Licensee added that, as it does with all its presenters, it provided training to the presenter on the Code. It therefore argued that prior to the presenter being allowed to present, it “had provided the correct and appropriate training to the presenter in question”, which, the Licensee believed, “was sufficient for this presenter to be live on air”. However, it said that “Unfortunately, the presenter did not abide by the procedures that he had been trained on” including that “he must not express or allow anyone else to express opinions that could be construed as being bigoted”.

Radio Ikhlas said that “given that the presenter has felt remorse and that he feels that he needs more training then we ought to provide him a period of rehabilitation and further advanced training on Ofcom’s guidelines”. The Licensee added that it “would need to be

certain that he [the presenter] fully understands procedures before we would even consider him having a live programme of his own”.

Radio Ikhlas said it that “[d]ue to the gravity of this matter”, it had decided to broadcast an apology on 9 October 2017 in its “popular” Drivetime programme.

Finally, the Licensee said that this was a one-off occurrence in an otherwise good record with Ofcom. It said it had over 200 presenters live on air without complaint. Radio Ikhlas said it had not “sanctioned” the programme and was not aware of its contents. It said that if it had been, it would not have allowed the programme on air or would have insisted on a balanced view from all parties.

The Licensee also provided representations in response to Ofcom's Preliminary View, which was to find the programme in breach of Rules 3.2, 3.3 and 2.3 and consider these breaches for the imposition of a statutory sanction.

Radio Ikhlas acknowledged that the content had breached Rules 3.2, 3.3 and 2.3 of the Code but disagreed with Ofcom's view that these breaches should be considered for the imposition of a statutory sanction.

The Licensee made several points about the fact that the content in this case had not been monitored by Radio Ikhlas. It said that “the 3pm slot is assigned to songs (nasheeds), a pre-recorded broadcast which does not require live monitoring”. Radio Ikhlas added that its staff had “assumed that [nasheeds] were being played as opposed to a volunteer presenting a live show”. It added that it only became aware “a breach had taken place after Ofcom had contacted us”.

On a related point, the Licensee disagreed with Ofcom's Preliminary View that it had no systems in place to monitor live input. It reiterated that every presenter “has to inform the [station] manager about the content of their show before it is broadcast”. It added that on the day in question, a member of staff was available until 1pm to monitor the presenter's programme but “the presenter in question did not turn up, nor did he inform any member of staff that he would do his show at a later time of 3pm”. Radio Ikhlas argued that if the presenter “had broadcast his show at the regular time, his programme would have been monitored and a member of staff would have been in a position to intervene”.

Also on the issue of monitoring, the Licensee argued that “it would put Radio Ikhlas as well as most community radio stations in the UK in a difficult and possibly unviable financial position of they have to monitor programmes all day which are not live programmes”.

The Licensee also made several points in relation to the presenter. It argued that Ofcom did not appear to have taken into account in its Preliminary View that the presenter had breached Radio Ikhlas's “own internal rules and regulations which he [had] signed and agreed upon”. It added that the presenter “feels he is accountable for his actions and due to his naivety, Radio Ikhlas should not be sanctioned” in this case. Finally, it said that the presenter had been informed that “his suspension is permanent and his voluntary work has been terminated”.

Radio Ikhlas identified several factors which meant that it had taken “no action...for a month” after this incident. These included the fact that it was: not aware of this incident until being informed by Ofcom; seeking an English translation of the content “so we would

completely understand what was said"; and wanting to meet the presenter before we made a public apology". The Licensee also said that "if the person who complained directly to Ofcom had contacted Radio Ikhlas at the time", it would have "investigated the matter immediately without hesitation". It further suggested that if the complainant had chosen to "phone in on the programme and challenge the views of the presenter live on the day", it "would have enabled the show to be a little bit more neutral".

Radio Ikhlas highlighted that since Ofcom informed it of the complaint, it had "co-operated fully with Ofcom's investigation and dealt with all actions swiftly and as soon as they were able to". It also set out the steps it had taken since the incident, including: reminding all volunteers about the internal guidelines for presenters; and ensuring all volunteers attended a one-to-one with the station manager to prevent such incidents in the future.

We also wrote to the person the Licensee identified as the presenter of the programme and invited him to comment on the Licensee's representations which related to him, specifically whether he was the presenter of the programme and whether the Licensee's description of how the programme came to be broadcast was accurate. We received no response to our letter. According to the Radio Ikhlas website, the person identified is an imam in Derby.

Decision

Reflecting our duties under the Communications Act 2003⁹, Section Two and Three of the Code require that generally accepted standards are applied to the content of television and radio services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material, including material containing hatred, abusive and derogatory treatment of individuals, groups, religions or communities.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights ("ECHR"). We have also had regard to Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". Ofcom must seek to balance broadcasters' freedom of expression and compliance with the Code.

Ofcom has also had due regard¹⁰ in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as religion or belief, and those who do not.

Broadcasters can transmit programmes taking a critical view of a particular religion or broadcasting opinions that some viewers may find offensive, and the Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising people of differing views or beliefs. To do so would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information. However, when broadcasting material of this nature, broadcasters must comply with all relevant rules, including: Rule 3.2 (hate speech must not be included except where it is justified by the context); Rule 3.3 (abusive or derogatory treatment of individuals,

⁹ <http://www.legislation.gov.uk/ukpga/2003/21/contents>

¹⁰ Under section 149 of the Equality Act 2010.

groups, religions or communities, must not be included except where it is justified by the context); and Rule 2.3 (material which may cause offence must be justified by the context).

Rule 3.2

Rule 3.2 of the Code states:

“Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context”.

The Code defines “hate speech” as: “all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation”.

We first considered whether the content in this programme constituted hate speech. For the reasons we have explained we were satisfied that the 21-minute segment of the programme was about the Ahmadiyya community and their religious beliefs. The presenter described Ahmadi people as: “*dangerous*”; “*liars*”; “*enemies of Islam, enemies of Pakistan, and enemies of our religion*”; “*hypocrites who frequently engage in propaganda to defame Muslims*”; and, people who have “*inflicted the greatest damage to Islam and to the believers of Islam*”. The presenter referred to the founder of the Ahmadi faith as being “*a liar*” and described the religious beliefs of Ahmadi people as “*very dangerous beliefs*” and “*filthy beliefs which shatter the true faith and promote untruths*”. He used the simile of filling a bottle of holy Zamzam water with alcohol to convey his view that the Ahmadiyya community is a polluting influence on Islam. He also said that when the members of the community preach to others about their beliefs “*they rob them of their faith ... That is what they try to do*”. In the context of these criticisms, the presenter said: “*we will have to identify them with our ranks*”, “*Protect yourself from them*” and asked “*how can we tolerate one who uses the title Muslim, which represents Muslims?*”.

We considered these statements were expressions of hatred based on intolerance of the Ahmadiyya community's religious beliefs and their broadcast spread, encouraged and incited such hatred among listeners. Therefore, it is Ofcom's Decision that this was hate speech as defined by the Code.

We next considered whether there was sufficient context to justify the broadcast of hate speech in this case. Our published Guidance to Rule 3.2 makes clear that there are certain genres of programming such as drama, comedy or satire where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. However, the greater the risk the material may cause harm or offence, the greater the need for contextual justification. In this case, we considered that the risk of the material broadcast causing harm or offence was particularly high, given that the segment lasted for 21 minutes, and the hate speech was repeated continuously throughout this part of the programme. We therefore considered that the need for contextual justification was particularly important in this case.

In assessing whether there was a contextual justification, Ofcom must take proper account of the broadcaster's and the audience's right to freedom of expression, which includes the right to receive information, and related rights to freedom of thought, conscience and religion.

The Code states that contextual factors relevant to Rules 3.2 and 3.3 of the Code may include, but are not limited to:

- the genre and editorial content of the programme;
- the extent to which sufficient challenge is provided;
- the status of anyone featured in the material; and
- the service on which the programme is broadcast and the likely size and expectations of the audience.

We therefore considered whether these or any other contextual factors were relevant to this case.

We recognise that Radio Ikhlas is a community radio station delivering content focusing on Islamic-related issues to a primarily Muslim audience. We accepted that Radio Ikhlas' listeners may well expect and enjoy content such as phone-in programmes touching on current affairs and discussion of religious issues relating to the Muslim community. In terms of the audience's expectations of the service provided by Radio Ikhlas, we took into account its key commitments and considered that listeners would have expected programming on Muslim issues to be conducted within this framework, which includes the promotion of improved local integration and the strengthening of links within the community served by the station. We therefore considered that Radio Ikhlas' service and the expectations of its target audience did not provide any context justifying the hate speech which was broadcast.

The Code does not prohibit discussions about controversial anniversaries such as 7 September 1974, the date when the Pakistani National Assembly voted to declare the members of the Ahmaddiyya community to be non-Muslim. However, we did not accept the representations put forward by the Licensee that the broadcast content was about the relevance of that anniversary in the context of Islamic and Pakistani history. Instead, we considered that the anniversary was used as a platform to broadcast a sustained, highly-critical attack on the Ahmadiyya community and their beliefs. We did not consider there was, and the Licensee did not offer, any editorial justification for the broadcast of these various highly critical statements.

Further, there was no material broadcast before or after this segment that provided any challenge to or criticism of the hate speech against the Ahmadiyya community. Although the Licensee suggested that the complainant could have phoned in to provide such challenge, there was no invitation in the programme broadcast for contrary views to be put forward. We therefore considered that there were no contextual factors arising from the editorial content of the programme which justified the hate speech.

We also considered the Licensee's representation that it had broadcast the following apology on 9 October 2017, after Ofcom notified it of the complaint:

"Before I start I must issue an apology. There was a show, a programme, which was broadcast on Radio Ikhlas on 7 September 2017 from 3pm until 4pm. Some parts of the show caused offence to some parts of the community. Radio Ikhlas would like to sincerely apologise".

The broadcast of an apology may provide context in some cases, for example where an immediate apology is made when offensive material is inadvertently broadcast during a live transmission. However, in this case the apology was broadcast over a month later. We took into account the factors cited by Radio Ikhlas for the delay in making a broadcast apology. These included the fact that it was: not aware of this incident until being informed by Ofcom; seeking an English translation of the content; and wanting to meet the presenter to discuss the incident. However, in our view: the prolonged delay in making a broadcast apology; and the fact that the apology was broadcast in a different programme at a different time of the day, meant that the apology could not be treated as context to justify the broadcast of hate speech in this case.

In reaching our Decision, we took into account the various steps taken by the Licensee to improve compliance. However, for all the reasons above, our Decision is therefore that Rule 3.2 was breached.

Rule 3.3

Rule 3.3 of the Code states:

“Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context”.

The Code does not prohibit criticism of any religion or denominations. However, such criticism must not spill over into pejorative abuse. The Code has been drafted in light of the Human Rights Act 1998 and the ECHR and seeks to strike an appropriate balance where broadcast content engages competing rights. In the context of Rule 3.3, it does so in particular in relation to the right to freedom of expression, which encompasses the broadcaster's and audience's right to receive material, information and ideas without interference, as well as the right to freedom of thought, conscience and religion and the right to enjoyment of human rights without discrimination on grounds such as religion.

We first considered whether this programme contained abusive or derogatory treatment of individuals, groups, religions or communities. As set out above, during a 21-minute segment of this programme, the presenter repeatedly referred to Ahmadiyya community and the religious beliefs of its members, using pejorative and offensive terms, such as referring to them as “*dangerous*” and “*enemies of Muslims*”, comparing them to a person who sells alcohol as holy water, and describing their religious beliefs as “*filthy*” and “*very dangerous*”. Ofcom therefore took the view that the broadcast contained material which amounted to abusive or derogatory treatment of the Ahmadiyya community and their religious beliefs.

We next considered whether there was sufficient context to justify the broadcast of this abusive and derogatory treatment. As set out above, the decision taken by the Pakistan National Assembly on 7 September 1974 was a legitimate topic for discussion in a programme aimed at members of the Muslim community. However, Rule 3.3 is clear that individuals, groups, religions or communities must not be subject to uncontextualised abusive or derogatory treatment. For the reasons already discussed under Rule 3.2, taking account of the strength of the derogatory views expressed about the Ahmadiyya community and their beliefs, we considered that the anniversary of the Pakistani constitutional amendment did not provide context which justified the broadcast of the abusive and

derogatory statements about the Ahmadiyya community and the religious beliefs of its members.

In reaching our Decision, we took into account the various steps taken by the Licensee to improve compliance. However, for all the reasons above, our Decision is therefore that Rule 3.3 was also breached.

Rule 2.3

Rule 2.3 of the Code requires that:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of...religion...)”.

We first considered whether the content had the potential to cause offence. Our view was that, for the reasons already discussed above, it did. As explained, the material broadcast constituted hate speech and was abusive and derogatory about the Ahmadiyya community and the beliefs of its members. By its nature, it discriminated against Ahmadi people on grounds of religion. We took the view therefore that this content would have been highly offensive to Ahmadi people who were listening and likely to cause humiliation and distress.

We next considered whether there was sufficient context to justify the broadcast of this offensive content. For the reasons set out above under Rules 3.2 and 3.3, we considered that the anniversary of the 1974 constitutional amendment in Pakistan in relation to Ahmadiyya community did not provide context which justified the broadcast of this offensive material. The material was broadcast without immediate challenge or critique nor with any invitation for opposing views to be put forward. In our view, the station's audience would not have expected to hear content of this type broadcast on a station such as Radio Ikhlas, which has the promotion of improved local integration as one of its key commitments. We were therefore satisfied that there was no context to justify the material causing offence in this broadcast.

Once again, we took into account the various steps taken by the Licensee to improve compliance. However, for all the reasons above, our Decision is that Rule 2.3 was breached.

Conclusion

Breaches of Rules 3.2 and 3.3 are by their nature serious. Against a background of reported threats against the Ahmadiyya community in the UK, we consider these breaches as a particularly serious matter.

We consider that the information provided by the Licensee about the presenter of the programme also serves to add to the seriousness of these breaches. It is reasonable to expect that a broadcast about Islam from a local imam would carry particular weight with its audience and consequently, in this case the broadcast programme would be more likely to have the very serious adverse effects that we have identified.

We were concerned that the Licensee did not appear to have sufficient and appropriate systems in place to ensure that its live output was being monitored or to take swift action if –

as here – the material broadcast was likely to constitute unchallenged hate speech. Radio Ikhlas made several representations on why the content in this case had not been monitored as it was being broadcast. In particular, the Licensee argued that it would be put “in a difficult and possibly unviable financial position” if it had to monitor all pre-recorded programmes.

We acknowledge the practical and logistical challenges faced by community radio licensees. However, it is a fundamental requirement of holding an Ofcom licence that all licensees have adequate processes in place to ensure compliance with the Code. It is an editorial decision for the broadcaster as to how it complies with the Code. However, in our view, having in place arrangements to ensure that all content is monitored as it is broadcast would mean a broadcaster can take swift and robust action if the most harmful content is broadcast, including uncontextualised hate speech.

The Licensee suggested that “it would have helped the content to be more neutral” if the complainant had called directly during the programme and challenged the presenter’s views. It also said that the presenter “feels he is accountable for his actions and due to his naivety, Radio Ikhlas should not be sanctioned”. However, Radio Ikhlas is licensed by Ofcom and the editorial responsibility therefore falls upon it, not its audience, nor its presenter, to have processes in place to ensure its broadcast content complies with the Code.

We were also concerned that the Licensee did not appear to have identified the broadcast content as raising serious issues under the Code until Ofcom made it aware of the complaint that it had received.

For all these reasons, we consider these breaches are very serious and we are putting the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction.

Breaches of Rules 3.2, 3.3 and 2.3

In Breach

Content relating to Burhan Wani *Prime TV, 6 July 2017, 18:34 onwards*

Introduction

Prime TV is a general entertainment satellite channel aimed at the Pakistani community in the UK and Europe. The licence for this service is held by Express TV UK Limited ("Express TV" or "the Licensee").

Ofcom received a complaint that, during a broadcast of a current affairs programme, a social media campaign was repeatedly promoted to commemorate the first anniversary of the death of the Hizbul Mujahideen¹ military leader Burhan Wani². The complainant expressed concern that the campaign was supporting a terrorist leader and encouraging terrorism in Indian administered Kashmir³.

Ofcom translated the content in this case from the original Urdu to English. We gave the Licensee an opportunity to comment on the accuracy or otherwise of the translation. Express TV raised no objection to the accuracy of the translation, and we therefore relied on this translation for the purposes of the investigation.

Material relating to the anniversary of the death of Burhan Wani and promoting the social media campaign *#IAMWani* was endorsed by⁴ and broadcast on the Pakistani news service Express TV and re-broadcast on Prime TV. The material was broadcast in a period lasting approximately 90 minutes across a series of items consisting of: rolling text and images; promotional clips; and a short news report (within the news headlines) to commemorate the first anniversary of Burhan Wani's death.

Rolling text and images

During this content, at different times the hashtag *#IAMWani* appeared as text at the bottom of the screen. The accompanying text invited viewers to text and upload, via social media,

¹ Hizbul Mujahideen is a Kashmiri separatist group which has been designated as a terrorist organisation by the EU, India and the US.

² Burhan Wani was a commander in Hizbul Mujahideen. He was killed by Indian Government forces on 8 July 2016 at the age of 22. Wani joined Hizbul Mujahideen when he was 15 and he has been widely reported as having propagated militancy in Indian administered Kashmir, particularly through the use of social media.

³ Kashmir is territory disputed by India and Pakistan, which is split into Indian-occupied Kashmir and Pakistani-occupied Kashmir.

⁴ The social media campaign was generated and endorsed by the Pakistani news service Express TV. The banners appearing from 18:53 (as set out in the Introduction) included the text: *"The whole world is watching this on Express TV"* and the specific branding of the social media campaign, which featured an illustration of Burhan Wani with a splattering of red to symbolise his blood, included the logo of Express News and the *#iamWani*.

photos including the text *#IAmWani* to express support for Burhan Wani. The social media campaign *#IAmWani* was also promoted in rolling text with images at the following times:

18:50: A series of full-screen images of Burhan Wani were shown, opening to the sound of a gunshot. These images, which lasted approximately 20 seconds, showed Burhan Wani: wearing military fatigues; a martyr's headband with the Shahada⁵ written across it; and, in his open coffin at his funeral being carried through crowds of supporters. The final illustrated image of Burhan Wani depicted his head and face overlaid by a splattering of red to symbolise blood. The logo of Express News appeared to the right of the image and the text read: *"#IAmWani Burhan Wani 8 July"*.

18:53: A banner appeared at the bottom of the screen with a series of small black and white images depicting: a militant shooting a rifle; Burhan Wani; protesters; and a soldier or policeman holding a baton up to a young person.

The images were accompanied by the following text headlines and were repeated on screen in a continuous loop lasting approximately one minute and 42 seconds:

"Jammu and Kashmir⁶";

"Who taught us how to fight against oppression with resolution?";

"Offer up your heroes in the freedom struggle";

"Who raised his voice against Indian oppression?";

"We salute you Burhan Wani";

"We salute Burhan Wani on the day of his martyrdom";

"#IAmWani write this on a placard and send it with your photo or upload an image of you holding it and send it to this What's App number...";

"Your love of the Kashmiri people, your [the viewers] love and devotion for the Kashmiri people"; and "The whole world is watching this on Express News".

19:16, 19:20 At these times the same grey banner appeared at the bottom of the screen with the following text:

19:29; 19:38

19:52

"Raise your voice";

"Burhan Wani – anniversary of his death";

"The person who raised his voice against Indian cruelty and oppression";

⁵ The Shahadah is the Muslim declaration of belief in the oneness of God and in Muhammad as his final prophet. The daily recitation of the Shahadah is one of the Five Pillars of Islam for Muslims.

⁶ In this context, Jammu and Kashmir refers to the Indian-administered state in Kashmir.

"Offer up your heroes for the struggle for Kashmiri freedom";

"We salute Burhan Wani on the anniversary of his death"; and

"[Burhan Wani] the one who taught us how to fight bravely against cruelty/oppression".

Promotional Clip

At 18:56 a short promotional clip lasting approximately 24 seconds was broadcast, featuring a series of reconstructed scenes of an actor posing as Burhan Wani. The actor was in a black shirt with a martyr's bandana tied across his forehead inscribed with the words of the Shahada⁷. He was featured as an image on the front of a newspaper with the headlines:

"Freedom activist Burhan Wani on social media";

"Voice of Freedom...Voice of Burhan Wani";

"Facts About Indian Atrocities in Kashmir. World News. Human Rights Abuses in Jammu and Kashmir⁸. Wani Shakes India";

"Burhan Trending in Kashmir"; and

"Burhan=Freedom Wani Uses Social Media".

The actor was then shown in a reconstruction looking at a computer screen and viewing a series of images of militants, protesters and armed personnel in riot clothing with batons and machine guns. The following statements appeared in English at the bottom of the screen throughout:

"Sons of Kashmir soil are we saviours of its Fate and Glee"; and

"Here to break the shackles of subjugation".

The promotional clip ended with an image of Burhan Wani depicted with his head and face overlaid by a splattering of red to symbolise blood. The logo of Express News appeared to the right of the image and the text read: *"#IAmWani Burhan Wani 8 July"*. The text at the bottom of the screen said:

"The martyr Burhan Wani's death anniversary approaches as situation worsens in the Kashmir valley".

Accompanying this image, voices chanted the following in voiceover:

"Wani, you are immortal".

⁷ See footnote 4.

⁸ See footnote 7.

News content

At 19:08 after the promotional clip, there were several unrelated news summaries. A second promotional clip followed, accompanied by music. The lyrics and accompanying images lasted for 15 seconds and consisted of:

"He became the voice of Kashmir, that love of martyrdom remains alive" [this was accompanied by various images of: protesters holding up photographs of Burhan Wani; crowds carrying his open coffin; and injured military personnel];

"This life is but transitory" [This was accompanied by a masked protester throwing rocks at paramilitary police];

"His story beats in every heart" [This was accompanied by an image of Burhan Wani wearing a martyr's bandana];

"Wani you are immortal" [This was accompanied by an image of graffiti [in English] on a shop saying, *"Burhan still alive"*]; and

"Martyrs never die" [slogan shouted by crowd].

Following on directly from this promotional clip, the news headlines continued with a short news item about the anniversary of Burhan Wani's death which lasted approximately 24 seconds. The news summary included footage of protesters and two images of Burhan Wani. The voiceover stated the following, while an image of Burhan Wani in combat fatigues and holding a weapon was broadcast:

"As the anniversary of Burhan Wani's martyrdom approaches the situation in occupied Kashmir worsens. In fear of demonstrating protesters, the Indian army has imposed a curfew in the valley. Women take an active role in the freedom struggle. [Images of demonstrators being confronted by police were then broadcast]. By raining down stones on the occupying forces they demonstrate that they will accept nothing less than [total] freedom." [Images of women dressed in headscarves covering their faces and protesting were then broadcast].

Throughout the news headline the illustrated image of Burhan Wani, depicting his head and face overlaid by a splattering of red to symbolise blood and used to denote the social media campaign, appeared on the left-hand side of the screen. Immediately after the news summary, there followed a number of photographs featured in the social media campaign broadcast earlier (see above) which lasted 33 seconds. The majority of these images also featured babies and children, overlaid with the captions:

"I am Wani";

"We are Wani"; and

"I am proud to be Wani".

The following was then voiced by the two presenters reading the news headlines:

"Yes, you too can take part in the #IAmWani campaign. Upload your photos and show solidarity".

There then followed three vox pops which lasted approximately 17 seconds:

Speaker 1: *"Burhan Wani is that brave individual who reignited the Kashmir freedom struggle after the 90's".*

Speaker 2: *"The shedding of his blood has once again reawakened the Kashmir struggle".*

Speaker 3: *"How many Burhan Wani's will you kill? From every home another Burhan Wani will rise up. [Red splash fills screen]"*.

We considered this content raised issues under the following rule of the Code and requested comments from the Licensee on how the content complied with this rule:

Rule 2.3: *"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context..."*.

Response

First Representations

Express TV stated that "contradictory versions and narratives are available on Mr Burhan Wani" and his status in Pakistan. It added that for members of the Muslim community in both Indian-occupied Kashmir and the UK, Burhan Wani was "firmly established as a true martyr and any material related to him and aired, must not be seen as inciting [or] encourag[ing] crime or violence". However, the Licensee added that the news content broadcast in this case was "not our own production" and in its view, as a "British Pakistani channel", the "British Government's stance on Burhan Wani remains of critical importance and one in which there is no clarity so far".

Regarding Rule 2.3, Express TV stated that it did not produce or broadcast its own news content and that all of its news and current affairs segments were transmitted directly from Pakistan. It added that the content in this case related to the first anniversary of the death of Burhan Wani which was "officially celebrated by [the] indigenous people of Kashmir, supported by government of Pakistan and promoted by every media outlet in Pakistan on that day". Therefore, the Licensee said that the social media campaign #IAmWani was promoted all day on various Pakistani media outlets, including on Prime TV "which was taking direct feed from Express News channel, Pakistan". However, Express TV also said that, in the light of "an unclear stance [by] British Government on Burhan Wani", it was therefore "unable to determine if displaying his hashtag would cause any offence".

The Licensee sought to assure Ofcom that it had taken steps to ensure "more strict monitoring" and referred Ofcom to its "own local talk shows" which it had broadcast against Islamic extremism and radicalisation in Britain and Europe. Express TV added that Prime TV has "never been remotely associated with any activity of inciting violence, propagating intolerant views or glorifying any individual or organisation linked with acts of terrorism".

Second Representations

Having reviewed the first representations summarised above, Ofcom invited the Licensee to provide further representations to clarify some of the statements previously submitted and the procedures undertaken when complying with this material.

In its second representations, Express TV acknowledged that it "may have breached" the Code. It explained that the vast majority of its programming was supplied by the Express TV service in Pakistan via two direct feeds, one for the Express TV Pakistani news service, and one for the Express TV Pakistani entertainment services. The Licensee said that these feeds were reviewed before transmission to ensure the material was compliant with the Code. It added that in this case the material was not a simultaneous retransmission of the Pakistani Express TV news service and there was a time delay of 60 minutes to allow for compliance checks.

The Licensee said that the anniversary of Burhan Wani's death was a major event in Pakistan and was covered by many other Pakistani news channels. However, Express TV apologised to viewers and stated that, with "the benefit of hindsight", it "should have edited out much of the coverage of the anniversary of the death of Mr Burhan Wani", adding that this was a "rare oversight". The Licensee said that in this case, the content referring to Burhan Wani was reviewed and edited "by a very experienced member of staff" who has compiled material for many years. However, it said that "on this occasion he was unaware that Ofcom considers the situation in Kashmir to be a matter of political controversy⁹ and he didn't realise that some of the comments and banners could be interpreted as inciting violence or criminal behaviour".

In conclusion, Express TV said that measures had now been put in place to ensure that any news items mentioning the situation in Kashmir would be "carefully scrutinised" and references edited out if there is likely to be a breach of any of Ofcom's rules.

Decision

Reflecting our duties under the Communications Act 2003², Section Two of the Code requires that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights ("ECHR"). Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other. We also had regard to Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from harmful or offensive material and the right to freedom of expression and the right to freedom of thought, conscience and religion.

⁹ In this case Ofcom had requested comments under Section Five of the Code, which amongst other things requires due impartiality to be preserved on matters of political or industrial controversy and matters relating to current public policy. However, on the basis of all the facts, we decided not to pursue this matter further under Section Five of the Code.

The ECHR enshrines the Licensee's right as a broadcaster largely serving the Pakistani Muslim community in the UK, to broadcast material from a Kashmiri perspective on issues which may be of interest to its viewers. Consistent with that right, Ofcom recognised that Prime TV chose to include content about the anniversary of the death of Burhan Wani which was, according to the Licensee, "officially celebrated by [the] indigenous people of Kashmir, supported by the government of Pakistan and promoted by every media outlet in Pakistan on that day". The anniversary of Burhan Wani's death was therefore a legitimate area and subject for the Licensee to cover. However, all broadcasters are required to comply with the Code so as to provide adequate protection for members of the public and it was incumbent on the Licensee to ensure that it did so.

In particular, under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by the context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

We first considered whether the series of repeated supportive statements about Burhan Wani broadcast in the form of on-screen text, promotional clips and within news content and used to encourage viewers to support a social media campaign *#IAmWani* commemorating the first anniversary of his death, had the potential to cause offence.

In Ofcom's view, the various statements, as set out in the Introduction, clearly glorified the deceased Hizbul Mujahideen commander as a martyr, and/or directly linked Burhan Wani's perceived status as a martyr as being a result of the actions he had taken to "fight" against the "subjugation" of the Muslim community in Indian administered Kashmir. For example, the content included:

- Some small black and white photographs depicting unrest and militancy accompanied by statements, such as: *"We salute Burhan Wani on the day of his martyrdom"*.
- At various times, a banner appeared at the bottom of the screen displaying the statements: *"[Burhan Wani] the one who taught us how to fight bravely against cruelty/oppression"* and *"The person who raised his voice against Indian oppression?"*
- A promotional clip featured reconstructed scenes of Burhan Wani viewing images of Kashmiri oppression on a computer and wearing a martyr's bandana inscribed with the Shahada¹⁰. Statements such as *"The martyr Burhan Wani's death anniversary approaches as situation worsens in the Kashmir Valley"* appeared at the bottom of the screen and were accompanied by the chanting: *"Wani, you are immortal"*.
- A second promotional clip featured music and a series of images of protesters holding up photographs of Burhan Wani and his corpse inside an open coffin. The lyrics included statements such as: *"Wani you are immortal; Martyrs never really die"*.
- The anniversary of Burhan Wani's death and his assumed "martyrdom" was also reported in the news headlines and this was accompanied by images of protesters and Burhan Wani in fatigues.

¹⁰ See footnote 4.

The illustrated image of Burhan Wani, depicting his head and face overlaid by a splattering of red to symbolise blood, appeared on the left-hand side of the screen throughout.

- Finally, three vox pops were broadcast, following the news headlines, in which three people attributed Burhan Wani with: reigniting the Kashmir struggle; reawakening the Kashmir struggle; and advised that *"from every home another Burhan Wani will rise up"*.

The Licensee said that for members of the Muslim community in both Indian occupied Kashmir and the UK, Burhan Wani was "a true martyr" and the anniversary of his death was a major event covered by many other Pakistani news channels. Ofcom considered however that the cumulative effect of this material, including the statements, illustrations, images and songs, had the potential to be highly offensive, particularly to those who did not endorse the glorification of a member of a proscribed terrorist organisation and their means of resolving any dispute in Kashmir.

Ofcom went on to consider whether the broadcast of this content was justified by the context.

Taking account of the nature and extent of the statements that were made, Ofcom was of the view that there would need to be very strong, if not exceptional, contextual factors to justify the likely degree of offence, in this case. This was particularly the case because this content glorified the deceased commander of a proscribed terrorist group, Hizbul Mujahideen, as a martyr, and/or directly linked Burhan Wani's perceived status as a martyr as being a result of the actions he had taken to *"fight"* against the *"subjugation"* of the Muslim community in Indian administered Kashmir.

The Licensee acknowledged in its second representations that it "may have breached" the Code and added that Prime TV has "never been remotely associated with any activity of inciting violence, propagating intolerant views or glorifying any individual or organisation linked with acts of terrorism". However, we considered that, the editorial content included repeated images, illustrations, music and statements which clearly re-enforced Burhan Wani's status as a martyr and attributed him with teaching his supporters *"to fight bravely against cruelty and oppression"*. For example, Burhan Wani was shown dressed in military fatigues and a martyr's headband. The images also showed his open coffin above the heads of crowds of supporters indicating his martyrdom status as well as graffiti claiming *"Burhan Wani is still alive"* and songs chanting *"martyrs never die"*. The statements were also illustrated by numerous thumbnail images and full screen images of protesters being oppressed by armed soldiers holding batons as well as individuals in military clothing or aiming machine guns. In our view, while stopping short of inciting others to carry out violent action in the same manner as Burhan Wani, this content did clearly glorify his life and violent actions.

This material was largely included as a series of promotional clips inserted into breaks of scheduled programming and not within a programme, and the statements were broadcast throughout without challenge or critique. Further, the material was also broadcast without any warning or other surrounding information. As audiences do not choose to watch promotional content, viewers would have come across this content unawares and could not therefore make an informed choice to avoid the offensive material.

Ofcom understands that while some members of the Kashmiri community may revere Burhan Wani, and the terrorist organisation he led, this view is far from universal. Therefore, the fact that some viewers may have perceived Burhan Wani to be a martyr or that the anniversary of his death was being promoted on various Pakistani media outlets, did not, in our view, justify Express TV broadcasting this content without challenge or other context. Similarly, the fact that this content was not the Licensee's "own production" or the fact that Express TV considered there was "no clarity so far" on the UK Government's view on Burhan Wani did not justify the broadcast of the content in this case. Hizbul Mujahideen, the group of which Burhan Wani was a member, has been designated as a terrorist organisation by the EU, India and the US. Therefore, we considered the Licensee could, and should, have been aware of Burhan Wani's controversial status both within Kashmir and outside. Ofcom is concerned that Express TV broadcast content expressing such strong, unchallenged support for, and glorification of, Burhan Wani and his violent actions as leader of a group which has been designated a terrorist organisation in various countries. This support was capable, in our view, of causing considerable offence.

We have taken into consideration that Express TV acknowledged in their second representations that the content "may have breached" the Code, and that "with the benefit of hindsight" it "should have edited out much of the coverage of the anniversary of the death of Mr Burhan Wani". The Licensee also apologised for the broadcast of this material and said it had introduced "more strict monitoring" of content originating from the Express TV service in Pakistan. However, for all of the above reasons, Ofcom considered that the content was not consistent with generally accepted standards in the UK and the likely expectation of UK viewers for Ofcom licensed channels. Ofcom was therefore of the view that there were no contextual factors to justify the broadcast of this material and our Decision is that Rule 2.3 was breached.

Given that the nature of the material glorified Burhan Wani, the leader of a proscribed terrorist group advocating militant means to end Indian administration in Kashmir, as a martyr, Ofcom also considered whether it engaged Rule 3.1 and was likely to encourage or incite the commission of crime or to lead to disorder¹¹.

In this case Ofcom considered that, taken together in the context of encouraging viewers to support a social media campaign to commemorate the anniversary of the death of Burhan Wani, the material did not amount to a direct or indirect call to action likely to incite crime or disorder and therefore our Decision is that Rule 3.1 was not breached.

Breach of Rule 2.3

¹¹ Under Rule 3.1, the Code makes clear that "material" may include but is not limited to: content which directly or indirectly amounts to a call to criminal action or disorder; material promoting or encouraging engagement in terrorism or other forms of criminal activity or disorder; and/or hate speech which is likely to encourage criminal activity or lead to disorder.

Resolved

Q Breakfast Show

Q Radio, 9 November 2017, 07:12

Introduction

Q Radio is a commercial radio station comprising of a network of seven local stations which broadcast across a number of different areas in Northern Ireland. The licence is held by Northern Media Group Limited ("NMG" or "the Licensee").

The Q Breakfast Show is networked across the Q network and is presented by Stephen Clements and Cate Conway.

On 9 November 2017, the presenters discussed a news story about the decision by Topshop to introduce gender neutral changing rooms. Stephen Clements explained that the decision was prompted by a complaint from a person who identified as trans feminine¹ and who had been asked by a member of staff to go to the Topman changing rooms to try on a selection of dresses.

Ofcom received a complaint that, during the discussion, Stephen Clements made offensive comments.

At 07:12, Stephen Clements introduced the news story:

Stephen: *"Topshop has abolished separate changing rooms for men and women".*

Cate: *"[sigh]...Why?"*

Stephen: *"It revealed the chain and Topman were now gender neutral after a complaint from a customer. One customer². There is a picture of him, her, him, it, what? Performance artist [name] who identifies himself, identifies her, identifies as trans feminine was wearing a dress and make-up at a Topshop store in Manchester last weekend. [Name] queued to try items on but was told to go to Topman – the retailer's male arm – [Name] later sent a message saying: 'who made you in charge of setting who is woman enough to use your changing room? You just lost an easy sale and lots of money'. The company then issued a statement saying: 'we are now gender neutral'. Now, there has been a backlash from parents".*

Cate: *"Yes. Well. Topshop is, would, be aimed at teenagers upwards".*

¹ Stonewall defines the use of the term "Trans" as an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) Transgender, Transsexual, Gender-queer (GQ), Gender-fluid, Non-binary, Gender-variant, Crossdresser, Genderless, Agender, Nongender, Third gender, Two-spirit, Bi-gender, Trans man, Trans woman, Trans masculine, Trans feminine and Neutrois.

² Topshop's policy on gender neutral changing rooms was introduced in the summer of 2017 and was already in place before the experience of the person cited in the news story by Stephen Clements.

Stephen: *"OK. A mum has said that's a flimsy curtain that is keeping men away from my daughter. I will not be back in Topshop. My thing on this is if you are gender neutral then you shouldn't really mind which one you use so why not just steer yourself into the male one for now. I would not be letting Poppy get changed in a changing room at six years of age with a man".*

Cate: *"No. Now – some shops do have gender neutral changing rooms –".*

Stephen: *"[interrupts] hang me up for it – no – wouldn't be happening".*

Cate: *"No. I wouldn't be comfortable with it because even though there is a curtain, the curtains does not always go edge to edge. Right? So sometimes you're kind of thinking other people are going to see me. Other women –".*

Stephen: *"But the whole thing is you can't get offended at that. If you are gender neutral you shouldn't care which one you are using. No?"*

Cate: *"But I don't think that person was gender neutral. I think they had identified as a woman".*

Stephen: *"Trans feminine. Is that what that means?"*

Cate: *"I think, I'm not an expert on it but I think that person identifies as a woman".*

Stephen: *"But still biologically a male?"*

Cate: *"I believe technically so".*

Stephen: *"This is a minefield isn't it, a political correct minefield".*

Cate: *"Yeah".*

Stephen: *"Yeah. And this is not against anyone in particular. If you have a gender neutral changing rooms fair enough but at least I can choose not to shop there. But I wouldn't be putting my – 100% nobody convinced me of anything different – that my six year-old daughter will be getting changed anywhere where a male biologically or non-biologically would be able to be in the same area as she gets undressed. Wouldn't be happening".*

Cate: *"Well generally my experience of being in Topshop when I was younger is my friends and I would go on a wee shopping day maybe when we were 15 or 16 and we would go in to Topshop and shops like that and try on loads of clothes and talk, so I wouldn't have felt comfortable doing that if there were men there, trying on jeans and things".*

Stephen: *"But Topshop has said this is the way it is going to be from now on. So at least I now know that I won't be shopping there".*

At 07:31 the presenters returned to the discussion:

Stephen: *"I used the word 'it' by accident earlier. [A listener] has taken great umbrage to this and rightly so. That was an incorrect remark".*

Cate: *"You didn't mean 'it'".*

Stephen: *"No, I didn't mean 'it'".*

Cate: *"No".*

Stephen: *"Struggling for words".*

Ofcom considered the material raised potential issues under the following rule of the Code:

Rule 2.3: In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, ...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership).

We therefore sought comments from the Licensee on how the above content complied with this rule.

Response

The Licensee said that Stephen Clements' comments did not comply with Rule 2.3 of the Code and this was a "great disappointment".

It said that the station had always respected its listeners regardless of their sexual orientation, gender or faith and had received the Media Award from the Belfast based GNI Mag, which honours organisations that have made a positive contribution to the LGBT community, and two nominations from The Belfast Pride Awards.

However, on this occasion, the Licensee said it was "sad" and "embarrassed" to say its standards had not been maintained. Indeed, it said that the comments by Stephen Clements were "insensitive and offensive" and went against all that the service stood for. The Licensee also said that Stephen Clements "deeply regret[ted] his ignorance and the offence he [had] caused" and had apologised (and the Licensee provided to Ofcom a copy of a personal apology for this incident from the presenter). In addition, the Licensee said that a meeting for all staff, presenters and managers at the station with the Rainbow Project³ was now planned. Further, a refresher course on the Code and its implications for all presenters had been scheduled.

The Licensee concluded that it was actively engaged in promoting tolerance for all in society and supported respect and equality for everyone. This incident had "brought home that there [was] no room for complacency" and it said that every effort would be made to ensure "that an incident like this is never repeated".

³ The Rainbow Project in Belfast is the largest LGBT organisation in Northern Ireland and as well as providing support to the LGBT community it offers professional training in gender identity awareness.

Decision

Reflecting our duties under the Communications Act 2003⁴, Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. The Code makes clear that context is assessed by reference to a range of factors including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

We considered whether the comments made by Stephen Clements, in which he referred to the trans feminine person in the news story as: "*him, her, him, it*" as well as the comments he made about the suitability for children of gender neutral changing rooms were potentially offensive.

Stephen Clements referred to a picture on social media of the person who complained about Topshop, as: "*him, her, him, it*". By using the word "*it*", he used a pronoun associated with objects rather than people, which had the potential to undermine a person who has a non-binary gender identity. In our view, this comment also appeared insensitive to the publicly stated gender identity of a trans feminine person. We therefore considered his words had the effect of portraying a trans feminine person in a negative and derogatory way and this had the potential to be offensive.

We also considered that the likely level of offence would have been increased in this case by Stephen Clements' further statement about the suitability of gender neutral changing rooms for children, specifically that he would not allow his six year-old daughter to change in a gender neutral changing room. Cate Conway had explained to Stephen Clements that if a person was trans feminine they identified as a woman. Stephen Clements had asked whether this meant they were "*still biologically male?*". Cate Conway confirmed she thought this was the case. Stephen Clements went on to say:

"...But I wouldn't be putting my – 100% nobody convinced me of anything different – that my six year-old daughter will be getting changed anywhere where a male biologically or non-biologically would be able to be in the same area as she gets undressed. Wouldn't be happening".

In our view, while there was some ambiguity in Stephen Clements' comments, this reference about the presenter's daughter could have been understood by listeners as suggesting that the safety of a young child could be compromised if she was in a changing room with a trans person. Ofcom considered this also had the potential to be offensive to the transgender community.

⁴ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Ofcom then considered whether the broadcast of these comments was justified by the context.

The comments were broadcast during the breakfast programme which features music, competitions and light-hearted conversation on the news stories of the day. Therefore, Ofcom acknowledged that listeners would have expected the presenters to express their personal views on a range of current issues in the media.

However, while discussing the story about gender neutral changing rooms, Stephen Clements used the words "*him, her, him, it*" to describe the trans feminine person who was the subject of the Topshop story. We acknowledged that in the context of this live broadcast, Stephen Clements was struggling to describe the person, having not established the correct pronoun for the trans feminine person before talking about this story on-air.

In addition, his comments about not allowing his six year-old daughter to get changed in gender neutral changing rooms aggravated the potential offence in this case by giving the impression to listeners that the safety of a young child could be compromised if she was in a changing room with a trans person.

We considered that within the context of discussion, Stephen Clements displayed a lack of awareness of trans issues generally. He sought clarification from his co-presenter about what trans feminine meant ("*Trans feminine. Is that what that means?*"; "*But still biologically a male?*" and "*This is a minefield isn't it, a political correct minefield*"). In our view, his comments in this discussion appeared to arise out of a lack of awareness and understanding of the offensive implications of his remarks.

Given all the above, we therefore considered there was insufficient context to justify the offensive content in this case.

We took into account that Stephen Clements went on to apologise on air soon after for the comment in which he referred to the trans feminine person as "*it*", and the presenters made clear that the comments had been offensive. We also took into account that the Licensee accepted that Stephen Clements' comments were in breach of Rule 2.3, and told us it had taken a number of steps as a result of this broadcast including addressing the issue of gender awareness by organising specific training for all staff at the station and a refresher course on the Code to ensure such comments were not repeated. In addition, Stephen Clements had also acknowledged and personally apologised for any offence he had caused. We therefore considered this matter resolved.

Resolved

Not in Breach

Coronation Street

ITV, 27 October 2017, 19:30 and 20:30

Repeats: ITV2, 28 October 2017, 09:20; 29 October 2017, 07:00; 30 October 2017, 08:30 and 12:50

Introduction

Coronation Street is an established soap opera broadcast six times a week on ITV. Episodes are also repeated during the day on ITV2. The series is produced by ITV Studios and compiled by ITV Broadcasting Limited ("ITV" or "the Licensee").

Ofcom received 541 complaints about two episodes of *Coronation Street* broadcast on the same evening at 19:30 and 20:30. These episodes featured the conclusion of a long running storyline, involving the characters Andy Carver ("Andy") Vinny Ashford ("Vinny") and Pat Phelan ("Phelan"). The plot culminated in the double murder of Andy and Vinny by series villain, Phelan. Complainants expressed concern that the storyline, which formed the central plot of the two episodes, was violent, menacing and disturbing and unsuitable for a pre-watershed audience.

Ofcom did not receive complaints about the repeat of these programmes on ITV2.

The 19:30 episode

This started with a continuity announcement which said: "*with threatening behaviour and scenes some viewers may find upsetting*". In this programme:

- Andy explained to Vinny that he would be Phelan's replacement hostage and Andy would now be freed;
- Phelan told Andy he had changed his mind and he wanted Andy to kill Vinny; and
- the two hostages were thrown in the back of Phelan's van but a phone call interrupted the next stage of Phelan's plan.

The 20:30 episode

The continuity announcement before this episode said: "*with strong words, threatening behaviour and violence throughout*". The storyline continued:

- Vinny tried to convince Andy to work together to stop Phelan from killing them;
- Vinny shouted for help only to find Phelan had returned;
- Phelan punched Vinny in the face to silence him;
- Vinny attempted to escape, Phelan punched him two more times in the face and knocked him unconscious;

- following a tense interchange in which Phelan goaded and manipulated Andy, Vinny was shot by Andy;
- Phelan took the gun from Andy and a loud gunshot (not in vision) was heard, signalling Andy's murder;
- Phelan was shown looking down on the two corpses, kneeling to close Andy's eyes; and
- Phelan was shown disposing of the two bodies in a river.

In the 20:30 episode two shootings and three instances of physical violence were shown. There was a dark and menacing tone throughout both episodes, particularly in the interactions between the three characters. This was driven by Phelan's unpredictable behaviour and the increasing desperation and vulnerability of his hostages.

Ofcom considered the material raised issues under the following rules of the Code:

- Rule 1.3: "Children must also be protected by appropriate scheduling from material that is unsuitable for them..."
- Rule 1.11: "Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed..."

We asked ITV for its comments on how the content complied with these rules.

Response

ITV said that the *Coronation Street* compliance team had extensive experience in advising the producers to ensure that "more challenging storylines, especially those involving scenes of violence, seek to balance the essential requirements of all drama (characterisation, conflict and tension etc) with the scheduling requirements of the Code".

It added that *Coronation Street* was intended "for a broad family audience and was at the core of ITV's main channel pre-watershed schedule". It said that the fact that these episodes were broadcast during the half-term holidays "may have had some but not a great influence" on the overall proportion of children watching these episodes. In any event, ITV said it was "always aware that all material should be suitable for audiences where children will be available to view and...where children will make up part of the audience."

ITV explained that the audience of *Coronation Street* had "a long-established expectation that on occasion the various 'villains' of the series can, and will, commit terrible crimes, including murder". In the last 15 years there had been "over a dozen murders, including shootings, stabbings, smotherings, and blunt force with a variety of implements." These deaths had in common: an emphasis "on the emotions and relationships between the characters, rather than explicit violent action"; dramatic justification and context within an involved storyline; a storyline that had usually developed over several months; and, that "inevitably has terrible consequences not only for the for the murder victim's loved ones but the perpetrators". Therefore, ITV said that violent deaths did not generally come as a surprise to viewers and such episodes were signposted with continuity announcements before transmission, and prior publicity.

To ensure consistency with Ofcom's research on audience attitudes towards violence ("the Violence Research")¹ and other Ofcom Decisions, ITV said it was conscious of the way any violence was presented and "the degree of visual detail and intensity of such violence". In these two episodes, it argued that the dramatic tension was derived from the suspense as to whether Andy would break free from the psychological control of Phelan, and join forces with Vinny to free them both. The Licensee said the dramatic tension was created not only by the threat of violence but the fact that "the viewer can clearly anticipate that [Phelan] in fact intends to do away with both" as Andy's captivity had left him "incapable of acting on this threat rationally".

ITV said that, in both episodes in this case, the tense scenes between Vinny, Andy and Phelan were "intercut with scenes of other characters and storylines" and notably in the 19:30 episode there was "no actual violence."

It added that in the 20:30 episode the instances of violence were appropriately limited in the following ways:

- the scene where Vinny was first punched by Phelan was "deliberately brief" and the impact of the blow was indicated but not seen directly as a result of quick editing;
- Phelan's further two punches were "carefully choreographed and edited" so that the viewer did not see the impact directly and it was only indicated that Vinny has been knocked out;
- when Andy shot Vinny, the scene cut away "from a close up of the firing gun to a long shot, briefly showing Vinny slump back on the floor" and the moment of death was "inexplicit" with the focus on the "emotional turmoil" of Andy rather than the physical suffering of Vinny;
- when Phelan shot Andy the scene cut away to an exterior so the gun shot was heard and the point of death was not shown at all; and
- the aftermath of the shooting showed no explicit close-ups of the gunshot wounds and the low lighting reduced the prominence of the small pools of blood in which the bodies were lying.

ITV concluded that these episodes were "certainly dark in their atmosphere and tone" as was often the case in a pre-watershed soap but "the degree or menace and explicit violence was nevertheless carefully and duly limited and was justified by the dramatic context of the plot which had been developed over several months.

It added that: "the careful editing of the material; the established expectations of this drama's millions of viewers; the editorial justification for the limited violence shown in the context of the storyline; the use of psychological rather than purely physical threat and the clear signalling to viewers (via prior publicity and continuity announcements)", demonstrated that these episodes had been suitably scheduled.

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/54933/violence_on_tv_report.pdf

Further, ITV said given the daytime and weekend repeats of *Coronation Street* on ITV2, its usual compliance practice is to ensure that material in all episodes that can be given a "schedule at any time" certification. ITV added it was always aware that all material should be suitable for audiences where children will be available to view or make up part of the audience.

Therefore, the Licensee argued that "none of the material was so strong as to be unsuitable for children" and was in compliance with Rules 1.3 and 1.11.

Decision

Reflecting our duties under the Communications Act 2003², Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Ofcom has taken account of the audience's and broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

The Code does not prohibit violent storylines or scenes, as long as these are appropriately limited and editorially justified, and that any content that is unsuitable for children is appropriately scheduled.

Although *Coronation Street* is not made specifically for children, it does attract a significant family audience including children. Any portrayal of violence in a programme with this audience profile therefore needs to be carefully considered.

Rule 1.11

Rule 1.11 states that violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed and must also be justified by the context.

We first assessed whether the level and nature of the violence was appropriately limited in the two episodes. There were no acts of physical violence in the 19:30 episode. The 20:30 episode featured three physical acts of violence and two shootings and the immediate impact of that violence. Ofcom's Violence Research found that the impact of violence on the audience increases with the level of detail shown. Ofcom considered that the depictions of physical violence in these four scenes were appropriately limited because:

- the point of impact of each of the three punches was not shown;
- the first shooting was shown as a long shot with no detail of the impact; and
- the second shooting was not shown but represented by the sound of a gunshot.

In our view, the stylised low lighting effects and the use of a long shot, for the scene where both corpses lay next to one another, ensured that viewers did not see any detail of the gunshots or their after-effects and only a limited outline of blood behind the corpses could be seen.

² <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Ofcom's Violence Research indicated several other factors which can affect viewers when watching violence in programmes. These factors might include an "atmosphere of unease" or implied violence created by prolonged menace which can add to a viewer's discomfort by creating a sense of threat. The research also found that the power dynamic between the perpetrator and the victim can be significant for viewers. Audiences were found to be less accepting of pre-watershed violence when more vulnerable characters were shown to be the victim of violence.

We acknowledged that, given past storylines, *Coronation Street* viewers were likely to be accustomed to challenging storylines which include violent deaths. However, we considered that the cumulative impact of the ongoing dark and menacing tone and the implied sense of threat throughout these two episodes was significant. It created an atmosphere of unease which was potentially disturbing for pre-watershed viewers. This was exacerbated by Andy being portrayed in a vulnerable state, and as being increasingly dependent on Phelan as a result of his long-term incarceration.

We went on to consider whether the threat and menace throughout these two episodes were justified by the context. We took into account a range of contextual factors including: the editorial content of the programme; the likely expectations of the audience; the time of broadcast; and the extent to which the nature of the content was brought to the attention of the audience for example through warnings before the programme was shown.

These episodes were the culmination of a long-running storyline which had developed over many months. Regular viewers would have been very familiar with the characters, particularly the disturbing relationship between Phelan and Andy. Viewers were therefore likely to have anticipated a dramatic conclusion to the storyline. Pat Phelan is an established villain and regular viewers were likely to have formed a clear insight into his double life of violence and coercion from previous storylines. In this plot, the kidnap and psychological manipulation of Andy had unfolded over a series of months with increasing menace. In addition, the storyline in the first of these two episodes clearly signposted to viewers that Phelan intended for Andy to murder Vinny and Andy's life was also under threat.

We took into account that each episode on ITV, and the repeats on ITV2, were preceded by clear specific warnings alerting viewers to the nature of the content they were about to see. The 19:30 episode started with a continuity announcement which said: "*with threatening behaviour and scenes some viewers may find upsetting*" and the warning before the 20:30 episode said: "*with strong words, threatening behaviour and violence throughout*". Ofcom was also aware that the storyline had featured in pre-programme publicity. Therefore, in our view, there was clear signalling to viewers over an extended period about the nature of the storyline and the audience could reasonably anticipate the violence and menace contained in these episodes.

In its representations ITV argued a number of other storylines were also running which were "deliberately intercut with other lighter scenes to break up the sustained tension". Ofcom considered these other storylines, particularly in the 20:30 episode were not necessarily lighter in tone as they included Phelan's daughter Nicola confronting him about the revelation she was conceived as a result of Phelan raping her mother and forcing him to admit he raped Anna Windass. However, we accepted that these other storylines did disrupt the intensity and menacing tone of the main storyline of incarceration and murder.

Overall Ofcom is of the view that the cumulative impact of the menacing storyline was justified by context in this case. While the threatening tone of the 20:30 episode reached the upper limits of what audiences are likely to expect pre-watershed, we considered this was mitigated by other factors which ensured that overall the material was suitable for a pre-watershed audience on ITV and ITV2. These factors were:

- the violence was the culmination of an established storyline which was likely to have been anticipated by regular *Coronation Street* viewers;
- viewers of these episodes were given clear warnings about the nature of the content immediately before it was shown on both channels; and
- the violence, which followed in the later episode, was limited and neither graphic nor gratuitous in nature.

Our Decision is therefore that there was no breach of Rule 1.11.

Rule 1.3

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by considering a variety of contextual factors including: the nature of the content; the likelihood of children being in the audience; the time slot; the nature of the channel and programme; and the likely expectations of the audience.

As set out above Ofcom considered that the cumulative impact of the ongoing dark and menacing tone and the implied sense of threat throughout these two episodes was significant. It created an atmosphere of unease which was potentially disturbing for pre-watershed viewers, and potentially unsuitable for children. It therefore required appropriate scheduling.

Ofcom took into account that *Coronation Street* attracts significant audiences including child viewers. We also took into account that these episodes were repeated during the day, in the usual *Coronation Street* weekend omnibus on ITV2. Ofcom did not receive any complaints about the repeat of these programmes on ITV2. We considered the programme scheduling was unlikely to have exceeded the audience expectations of that channel, which regularly broadcasts omnibus editions of pre-watershed soaps at those times.

We took into account the key contextual factors in this case discussed under Rule 1.11 above: the nature of the long running storyline; the well-established characterisation; the production techniques used to limit the amount of violent content shown; and the clear signalling both in terms of the warnings before each episode and the build up of the storyline over the two episodes which indicated the likely violent ending.

We acknowledged that parents and carers who are regular viewers of *Coronation Street* were likely to have expected some challenging and potentially disturbing content in these episodes given the storyline was well established, publicised and clearly signposted.

In our view, these factors ensured that the programme were appropriately scheduled for broadcast pre-watershed on ITV and ITV2, and our Decision is that there was no breach of Rule 1.3.

Not in Breach of Rules 1.3 and 1.11

Advertising scheduling cases

In Breach

Advertising minutage

NTV, 29 November 2017 to 4 January 2018, various times

Introduction

NTV is a general entertainment and news service aimed at the Bangladeshi community in the UK. The licence for the service is held by International Television Channel Europe Limited ("ITCE" or "the Licensee").

Rule 2 of the Code on the Scheduling of Television Advertising (COSTA) states that:

"Time devoted to advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes".

During routine monitoring Ofcom identified 31 instances where the amount of advertising broadcast on NTV in a clock hour appeared to exceed the permitted allowance. The overruns varied in length, the most significant being five minutes and 44 seconds.

Ofcom considered that this raised issues under Rule 2 of COSTA and therefore sought comments from the Licensee as to how the content complied with this rule.

Response

The Licensee acknowledged that the clock hours identified exceeded the permitted allowance of advertising.

ITCE explained that it had exceeded the 12-minute threshold due to "technical glitches" and the broadcast of live programming. It added that its scheduling system now had the necessary alerts in place to prevent a recurrence, and a senior staff member would in future check all daily 'as broadcast' advertising reports. It also said that all relevant staff had been given further training on the scheduling system and reminded of the requirements of COSTA.

Decision

Reflecting our duties under the Communications Act 2003¹, COSTA sets limits on the amount of advertising than can be broadcast. It includes rules that limit the amount of advertising that can be shown across a broadcasting day as well as during any clock hour.

On a significant number of occasions, the amount of advertising broadcast in a clock hour exceeded what is permitted. It is therefore Ofcom's decision that the Licensee breached Rule 2 of COSTA.

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/322>

We acknowledged the Licensee's assurances that the error would not be repeated. Ofcom will continue to monitor the Licensee's compliance with COSTA.

Breaches of COSTA Rule 2

Broadcast Licence Conditions cases

In Breach

Providing a commercial radio service

Rathergood Radio (Durham); 7 December 2017 to 8 February 2018

Introduction

Rathergood Radio (Durham) is a radio station licensed to provide “a broad hits-based station providing local information for 25-54 year-olds in and around Durham, with a strong commitment to local news.” The licence is held by Alpha Radio Limited (“Alpha Radio” or “the Licensee”).

Condition 2(1) of Alpha Radio’s licence states:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service services so much of the licensed area as is for the time being reasonably practicable.” (Section 106(2) of the Broadcasting Act 1990.)

The Licensee contacted Ofcom on 6 December 2017 to advise of a potential cessation of transmission of the Rathergood Radio service from the Brussleton (106.8 FM) and Burnhope (102.8 FM) transmitters owned by Arqiva. This was followed by a subsequent confirmation of the termination of service provided directly to Ofcom by Arqiva on 7 December 2017.

As a result of this, the service was not broadcast to the licensed area from 7 December 2017 to 8 February 2018.

Ofcom considered the matter raised issues warranting investigation under Condition 2A of Alpha Radio’s licences. We therefore requested comments from the Licensee on how it had complied with this condition.

Response

Alpha Radio accepted that it was not meeting the requirement of its licence to maintain provision of the licensed service, as required by Condition 2(1).

It explained that its intention was to maintain the provision of the service in collaboration with Arqiva until such a point as its own transmitters were in place.

Alpha Radio said that following the submission of its request to Ofcom to provide the service from its own transmitters, it had entered into negotiations with Arqiva, to continue a service, but advised that “an acceptable technical solution ... could not be achieved” for this interim period.

In addition, the Licensee explained that it was required to vacate its premises as it had been condemned. The Licensee also noted that previous attempts from Arqiva to provide an alternative solution were unsuccessful as Arqiva’s supplier would not implement any changes to the existing communications infrastructure between the studio and transmitter due to

asbestos being present at the studio location. Following this, Alpha Radio explained that it was unable to reach an agreement with Arqiva prior to termination of the service. Due to the fact that Alpha Radio's temporary transmitters were unable to provide the service to the licensed area, the Licensee proposed to Ofcom a short-term solution of "departing from the character of the licensed service in the interim" while Ofcom reviewed its technical request to provide the service from its own transmitters.¹

Arqiva's Response

Ofcom considered that Arqiva was a directly affected third party and we therefore gave Arqiva the opportunity to make representations.

In response to Ofcom's Preliminary View that Alpha Radio was in breach of Condition 2(1) of its licence, Arqiva responded to confirm that it had terminated transmission services for non-payment of fees by Alpha Radio.

Arqiva described a variation agreement entered into by both parties which would amend existing transmission agreements, consolidating existing arrangements into a single transmission agreement covering services to all sites, extending the contractual term until 31 October 2026. Alongside this updated agreement, Arqiva stated that a payment plan was put in place to consolidate amounts outstanding and pay these amounts alongside the fees described in the new agreement. Arqiva stated that the Licensee failed to make payments to either this payment plan or the amended transmission agreement. Arqiva has stated that it was "not in a position to incur any further costs or provide any interim solutions." Subsequently, Arqiva terminated the transmission service.

Decision

The provision of a licensed service by the licensee on the frequency assigned to it is the fundamental purpose for which a commercial radio licence is granted. Ofcom has a range of duties concerning broadcasting, including ensuring the availability of diverse programming and the optimal use of spectrum. This is reflected in the licence conditions requiring the provision of a licensed service. Where a licensed service is not provided in accordance with licence conditions, consumers are not adequately served and the limited resource of radio spectrum is not used to its optimal capacity. In this case, where the service has ceased broadcasting to the licensed area, the consumer is not served appropriately and choice is reduced.

We considered Alpha Radio and Arqiva's representations about how this situation occurred. It is important to note that Ofcom's remit does not extend to cover individual commercial or contractual relationships – our role is not as an arbiter in situations such as these.

We noted that Alpha Radio acknowledged the breach of Condition 2(1) setting out the measures it had taken prior to the termination of the service to avoid such a scenario arising. Condition 2(1) requires that the Licensee "shall secure that the Licensed Service services so much of the licensed area as is for the time being reasonably practicable".

While the Licensee notified Ofcom in advance, we considered that this issue should have been highlighted sooner and that more effective steps may have been taken to avoid the

¹ Ofcom approved the Licensee's technical change request on 12 January 2018.

breaches. In Ofcom's opinion Alpha Radio had insufficient contingency plans in place to mitigate the risk of such circumstances occurring or to rectify the issues as soon as possible. The Licensee failed to provide the service from 7 December 2017 to 8 February 2018, and was therefore in breach of Condition 2(1) of its licence.

Breach of Licence Condition 2(1) in Part 2 of the Schedule to the Local Sound Programme licence held by Alpha Radio Limited (licence number AL101786).

Fairness and Privacy cases

Upheld

Complaint by Ms C on behalf of Mr D *Inside the Gang, Channel 5, 8 May 2017*

Summary

Ofcom has upheld this complaint made by Ms C on behalf of her son, Mr D, of unwarranted infringement of privacy in the programme as broadcast.

The programme included footage of Mr D in a prison cell being filmed on a mobile phone by another prisoner. Mr D was shown semi-naked, sitting on the top of a bunk bed being made to apologise to a rival gang. Although Mr D was not named in the programme and his face was blurred, his undisguised voice could be heard.

Ofcom found that Mr D had a legitimate expectation of privacy in relation to the broadcast of the footage of him and that this outweighed the broadcaster's right to freedom of expression, the audience's right to receive information and ideas without interference and the public interest in broadcasting the footage in this case. Therefore, we considered that Mr D's legitimate expectation of privacy was unwarrantably infringed in the programme as broadcast.

Programme summary

On 8 May 2017, Channel 5 broadcast an episode of *Inside the Gang*, an investigative documentary series looking at gang culture in the UK. This edition entitled *Young Blood*, looked at the changing behaviour of gangs and how younger members were using social media to share videos of violence towards, and intimidation and humiliation of, rival gang members.

During the programme, the programme's narrator explained that being in prison was an opportunity for younger people to learn from the older generations. A former gang member called "Junior Smart" said: "*prison strengthens that whole family tie rather than disconnects it*" and the narrator said: "*but the original wars fought on the streets can also be intensified*". Junior Smart continued:

"If you had enemies on road, they're going to follow you into that environment, and now it's close-quarter conditions, you could be banged up with a rival person who really can't stand you and actually they're in the cell and there's no escape".

The programme then included footage filmed on a mobile phone in prison which showed an unidentified man (whose face was not blurred) as he filmed Mr D (whose face was blurred). Mr D was shown semi-naked, sat on the top of a bunk bed as the following conversation took place:

Man: "Say hello..."

Mr D: No.

Man: *Say hello fam.*

Mr D: *No.*

Man: *Let me see the side of you, what's that?"*

The narrator said: *"This illegal phone footage seems to show two rival gang members having to share a cell".* The footage continued:

Man: *"What's that?"*

Mr D: *Bruise fam.*

Man: *A big bruise, oh shit. And what happened to you?*

Mr D: *Banged up.*

Man: *Nah, nah, nah, you never got banged up fam. You got eaten up fam. Eaten up. This little pussyhole. Listen, say sorry to my guys then.*

Mr D: *Sorry Peckham.*

Man: *Huh?*

Mr D: *Sorry Peckham.*

Man: *Sorry, what?*

Mr D: *Peckham, Peckham.*

Man: *You're sorry, yeah?*

Mr D: *Yeah man.*

Man: *Ha. Kicked this nigga's motherfucking ass in there blud, yeah..."*

No further footage of, or reference to, Mr D was included in the programme. Mr D was not named in the programme, however, his voice was not disguised.

Summary of the complaint and broadcaster's response

Ms C complained that Mr D's privacy was unwarrantably infringed in the programme as broadcast because footage of him after he had been attacked and "nearly killed" by another inmate while in prison was included in the programme without his consent. She added that he was identifiable from the programme as his voice was undisguised.

By way of background, Ms C said that the footage showed an incident which had taken place in 2014 and its broadcast brought back a "lot of memories for my son" and this had affected his mental health.

Channel 5 said that the part of the programme which featured footage of the complainant's son was included to demonstrate the ways in which gang members in modern Britain used social media – even while in prison – to punish and instil fear in their rivals and to enhance their own reputation as “uncompromising and intolerant turfmasters”. The broadcaster said that the footage of the complainant's son showed how one gang humiliated a member of another gang for some unspecified disrespect with the intention of distributing the footage to humiliate the transgressor, who had been beaten up by the gang previously and apparently while in prison. It said that this sought to entrench the sense of fear about crossing the line with the first gang.

Channel 5 said that the programme makers sourced the footage from the internet. It said that until receipt of the complaint, neither the programme makers nor Channel 5 knew the identity of the person in the footage. The broadcaster said that the clip was uploaded from YouTube, where it was still freely available. It said that apart from contact through YouTube, which was attempted with no success, there was no way for the programme makers to identify, or contact the person who originally posted the video in order to identify the complainant's son. The broadcaster added that during the production period, the programme makers became aware that the video had been shared and posted on various social media outlets.

Channel 5 said that the version of the clip included in *Inside the Gang* did not identify the victim. It said that his face was blurred. It added that the clips available online did not obscure the face of the complainant's son. The broadcaster said that the voice of the complainant's son was not altered in the broadcast, but that this was consistent with usual broadcasting practice. It said that only those who knew the complainant's son could have identified him from his voice. It added that it is unlikely that anyone who knew the complainant's son did not also know that he was in prison and had been beaten up while in prison. The broadcaster said that the complainant did not assert that the broadcast identified her son as someone who had been ‘attacked and “nearly killed”’ to persons who did not know that. It said that the complaint was that her son was identified by his voice from the clip and that therefore people knew it was her son in the clip in the programme.

Channel 5 said that the victim in the footage was not identifiable, other than by his voice. Channel 5 added that if any person was able to identify the victim from his voice on the footage shown in *Inside the Gang* it could only be because she/he already knew who the victim in the footage was independently of the broadcast. It said that no ordinary, reasonable viewer watching *Inside the Gang* could possibly have identified the victim solely from the broadcast.

Channel 5 said that Article 10 (freedom of expression) of the European Convention on Human Rights (“ECHR”) permitted the inclusion of the clip, edited to obfuscate the identity of the victim, in the broadcast as it clearly demonstrated an important and very serious theme the programme was exploring. It said that including the clip was in the clearest public interest in all of the circumstances.

Channel 5 said that the series itself raised important questions about official and societal responses to gang activity. It said that it contributed to the public discussion about how and why and whether current gang activity is tolerated or not and whether or not responses to gangs are appropriate or need to evolve or intensify.

Channel 5 said that it regretted any entirely understandable distress felt by the complainant's son. It said that if it had been possible for Channel 5 to contact the victim and his family prior to the broadcast to advise them that the clip would be included in the broadcast, that would have been done. However, Channel 5 said that neither it nor the programme makers knew the identity of the victim or any way to contact him or his family.

Channel 5 said that for the reasons set out above, it did not believe that any viewer of *Inside the Gang* could have identified the complainant's son from the broadcast unless they were already aware of the existence of the video from social media. Channel 5 said that in those circumstances, the broadcast could not involve a breach of the complainant's son's privacy rights.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. The complainant did not submit any representations. Channel 5 made the following representations.

Channel 5's representations

Channel 5 said that in case of *Peck v The United Kingdom*¹, when dealing with a case about CCTV footage of the aftermath of a person's suicide attempt in public, which had been broadcast without any attempt being made to mask the identity of the person, the European Court of Human Rights said:

"In sum, the Court does not find that, in the circumstances of this case, there were relevant or sufficient reasons which would justify the direct disclosure by the Council to the public of stills from the footage in (sic) own publication 'CCTV News' without obtaining the applicant's consent or **masking his identity**, or which justify its disclosures to the media without the Council taking steps to ensure so far as possible that such masking would be effected by the media". (Emphasis added by Channel 5).

Channel 5 said that taken together without other comments made by the Court, it was clear that the Court took the view that there would not have been any relevant invasion of privacy had the identity of Mr Peck been "masked" in the relevant broadcasts.

The broadcaster added that, Ofcom having found that Mr D was not identified by the programme to members of the wider public, and that it was more likely than not that, to the extent he was identified at all, Mr D was identified only to people who knew him and therefore were likely to already have some knowledge of this incident, there could be no relevant invasion of his privacy.

Channel 5 said that where the identity of a person is unknown to the ordinary, reasonable viewer, there can be no breach of privacy rights. An individual's right to privacy is completely bound up in that person's identity. It said that unless an individual is identified in a broadcast or publication, their Article 8 rights, akin to their rights in libel or malicious falsehood, are simply not engaged.

¹ [2003] 36 EHRR 41.

Channel 5 said that there is no evidence that the programme identified Mr D to any person apart from his mother and himself. Channel 5 said that it appeared from the correspondence that Mr D is still imprisoned and so the likelihood of him being recognised by members of the public was low. It added that it was more likely than not that his fellow prisoners would have known about the event from the person who committed violence in relation to Mr D or the continued presence of the footage, unobscured, on social media sites which, as the programme indicated, were popular in criminal circles.

Channel 5 also referred to Practice 8.8² of Ofcom's Broadcasting Code ("the Code") which it said confirmed that non-identification of a person was a key step in avoiding breaches of privacy.

The broadcaster said that Mr D was clearly in a sensitive situation. It said that because his identity was not known to Channel 5, and there was no way for Channel 5 to establish that identity, the only appropriate course open, and the one sanctioned by the Code, was to take all reasonable steps to mask Mr D's identity. It said that it had done this, and that Ofcom had found that Mr D was not identifiable.

Channel 5 added that Ofcom's decision in the complaint made by Ms K³ supported this approach. In particular, it identified that Ofcom had said:

"We noted that Ms K was not named in the programme nor was her voice heard in the CCTV footage. We also noted the techniques used to disguise Ms K's identity in the programme, i.e. her face was obscured. We also considered that there was nothing particularly distinctive about her physical appearance and clothing that could be reasonably regarded as rendering her identifiable to ordinary viewers. Further, we also noted that the man was not named in the programme, his voice was not heard in the CCTV footage, his face was obscured and there was nothing particularly distinctive about his physical appearance or clothing to identify him to ordinary viewers. **As such, we took the view that it was not possible for ordinary viewers to identify Ms K through any association she may have had with the man. Further, the tower block in which the lift was situated was not identified. Nevertheless, we considered that the limited information given about the location of the tower block and the inclusion of the footage of Ms K (which she said people had recognised her from) may have made her identifiable to a very limited number of individuals who already knew her. Therefore, the extent of any infringement into Ms K's already limited expectation of privacy was limited**". (Emphasis added by Channel 5).

Channel 5 said that similar considerations applied in this case. It said that while Mr D's expectation of privacy in relation to unobscured footage of the incident could be medium to high (because he knew he was being filmed and he knew that footage would be distributed to the public), it was difficult to see why any expectation of privacy ought to arise in relation to the obscured footage and certainly no expectation higher than that enjoyed by Ms K. Further, it said that the public interest in the programme, *Inside the Gang*, would be higher

² "...in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). **If the individuals will not be identifiable in the programme then separate consent for broadcast will not be required**" (emphasis added by Channel 5).

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0017/45440/issue275.pdf

and stronger than the public interest in the programme which was the subject of Ms K's complaint.

Channel 5 said that if the Preliminary View was maintained then Ofcom was effectively stating that the footage of Mr D could never be broadcast. It said that it was "difficult to imagine a scenario where the editorial context and Article 10 justification for inclusion of the obscured footage could be higher than in the case of this programme, *Inside the Gang*". Channel 5 said that it was a serious programme about the pernicious and unlawful effects and actions of gang members. Channel 5 added that "if the public interest in that programme was not sufficiently high to outweigh any interest Mr [D] might have in the obscured footage, what sort of programming could?"

The broadcaster said that the footage of Mr D in the broadcast was not included lightly and was not used inappropriately. It added that the footage was an actual example of an unjustified attack on a young person carried out because of gang culture. Channel 5 stated that the purpose of including the footage was to ensure that such atrocities did not occur again.

The broadcaster said that the footage did not reveal Mr D's identity, but did reveal the unlawful activities of certain gang members, which it said was in the "clearest public interest".

Channel 5 said that there was no doubt that Mr D would have found it distressing to view the footage included in the programme. However, it said that the fact the broadcast was distressing to Mr D, or those in his family did not establish a relevant breach of any privacy right held by Mr D. Channel 5 referred to Lord Hope's view in *Campbell v MGN Ltd*⁴ that the law of privacy was not designed to protect the unduly sensitive and that if it were otherwise, privacy would become an unacceptable chilling effect on free speech. The broadcaster added that Ofcom had recognised this in its Adjudication on the complaint made by *Mrs B and Mr C*⁵ in which Ofcom said: "distress alone is not sufficient to engage the complainants' privacy rights". It added that Channel 5 agreed with Ofcom's view and said that Mr D's distress, however keenly felt, was insufficient to establish a breach of his privacy rights.

Channel 5 said that the Preliminary View suggested that Ofcom had not followed the well-established methodology of the case law of the European Court of Human Rights in relation to the balancing of Article 8 and Article 10 rights.

Channel 5 said that the first issue, to which the case law attributes particular importance, is whether the information is capable of contributing to a debate of general interest, there being little scope under Article 10 for restrictions on freedom of expression when a matter of public interest is at stake. It added that the decisive question was whether the broadcast was capable of contributing to a debate of public interest. It said that Ofcom had found that it did.

The broadcaster said that where the subject matter of the broadcast contained information which was of public interest, and the broadcast of the material was capable of contributing

⁴ [2004] 2 AC 457.

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0018/50436/issue_284.pdf

to a debate of general interest, this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of expression i.e. broadcasting the obscured footage of the unlawful and humiliating mistreatment and assault of Mr D, was also protected under Article 10. Channel 5 cited the case *Jersild v Denmark*⁶ which emphasised that it is not for national authorities to:

“...substitute their own views for those of the press as to what techniques of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed”.

The broadcaster said that the Article 10 rights of Channel 5 and the programme maker to impart, and the audience to receive, the information in *Inside the Gang* weigh heavily in the balancing exercise. Channel 5 said there must be very weighty privacy interests at stake if any restriction is to be placed on Article 10 rights, which there were not in the case of obscured footage of the attack on Mr D. Channel 5 said it would be entirely different if the footage had been broadcast unobscured.

Channel 5 said that there can be no criticism of the way in which Channel 5 and the programme maker obtained the material in this case. It said that the material was factually accurate and self-evidently so. Channel 5 said that it proceeded on the basis of the wording of the Code, Ofcom's previous decisions interpreting the relevant parts of the Code in the context of fairness complaints concerning footage involving obscured persons, and in complete good faith. It added that it was impossible for Mr D and his family to have been warned in advance of the broadcast.

Channel 5 said that this was not a case where it had acted recklessly or had ignored the interests of Mr D. It said that he had been properly obscured, in accordance with long-standing conventions, in the footage so that he would be, as Ofcom found he was, unidentifiable.

Channel 5 said that properly considered, the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of Mr D obscured so as not to breach his Article 8 rights, and such Article 8 rights as might arise in relation to the obscured footage.

Channel 5 added that there was a unique consideration in relation to this case. It said that Mr D was detained at “Her Majesty's pleasure”. It said that the programme demonstrated that prisoners have access to phones in prison and, accordingly, access to material posted on the internet. Channel 5 said that the material about which Mr D complained was much more likely to have been seen by his fellow inmates, from whom he apparently feared reprisals, from the online footage as inmates and gang members were the intended audience for online postings. Channel 5 said that this factor was important in the relevant balancing equation.

The broadcaster said that in the complaint made by *Ms K* (referred to above), Ofcom found that the public interest outweighed any interest arising from obscured footage. Channel 5

⁶ [1994] 19 EHRR 1.

said that there seems no reason in principle for a different conclusion to be reached in this case.

Channel 5 also cited Mann J in *BKM Limited v BBC*⁷:

“Miss Heal has a limited point. **She may well be right about any broadcast of, for example, a resident's use of a commode is a contravention of his or her privacy and dignity rights, however heavily pixilated.** On the other hand, there is little if any invasion of privacy if a resident merely sitting in the lounge is shown heavily pixilated (of course the act of filming will probably already have been an invasion, but that is not the immediately relevant point). And in any event, these factors are not automatically determinative of the significance of the invasion of privacy. The circumstances are important. Consent is obviously important, and if present would be determinative. But its absence does not determine the case the other way.

Thus, it may be that contraventions of the Article 8 rights are not completely removed by taking cinematic steps to obscure the identities of those depicted. That is both for the reason given above, and because (as the trailer broadcast indicated) residents might still be identifiable by those who know them and who know they are in the home, though in many cases if that is the extent of the identification then the privacy infringement may be very slight. However, that does not mean that those means are irrelevant. **The level of an invasion of privacy is relevant to the balancing act that I have to perform. An invasion of privacy should not be allowed beyond that which is necessary in the public interest. It is hard to imagine that the public interest would ever justify the unpixilated broadcasting of an image of a resident using a commode. It might well justify broadcasting a heavily obscured image. Other examples can be given. So, one cannot say that any portrayal of the residents will give rise to a sufficiently serious infringement of privacy rights to outweigh any public interest justification coupled with Article 10 rights**”. (Emphasis added by Channel 5).

Channel 5 concluded that it did not believe that any breach of the Code was involved in the broadcast of the programme.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript of it, the unedited footage and both parties' written submissions. Ofcom also took careful account of the representations made by Channel 5 in response to Ofcom's Preliminary View.

⁷ [2009] EWHC 3151 (Ch).

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In addition to this rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

We considered the complaint that Mr D's privacy was unwarrantably infringed in the programme as broadcast because footage of him in prison was included in the programme without his consent. The complainant said that Mr D was identifiable from the programme as his voice was undisguised.

Practice 8.6 states:

"if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted".

We first considered the extent to which Mr D had a legitimate expectation of privacy in relation to footage of him included in the programme.

Ofcom considers that the test as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be assessed in light of the circumstances in which the person concerned finds him or herself. Ofcom therefore approaches each case on its facts and applied this approach in considering this complaint.

In considering the complaint made on behalf of Mr D, we took into account that the footage showed Mr D in his prison cell being intimidated and being made to apologise to a rival gang after he had apparently been attacked. It showed him semi-naked sitting on the top bunk of the bed in the prison cell. As described in the programme, the footage was filmed to humiliate and shame Mr D and revealed that he had apparently been the victim of an assault. Given this, we considered that the footage showed Mr D in a sensitive situation.

Ofcom understood that the footage had been taken from an online source, and we recognised that the footage, which showed Mr D's face unobscured, was in the public domain and was still accessible to members of the public at the time of broadcast. However, it is Ofcom's view that people are not necessarily deprived of their right to privacy if information, in respect of which they claim that right, has been put in the public domain in the past. Each case must be considered on its own facts.

The footage related to an incident which had taken place in 2014 and we recognised that Mr D would have been aware that the incident was filmed and that he was likely to have understood that it would be shared by the person filming it with others. We considered that it was unlikely that Mr D would have chosen to place this footage in the public domain himself, or that he had consented to it being put there. We therefore did not consider that the availability of the footage in the public domain meant that Mr D would have been deprived of his right to privacy in connection with the broadcast of the footage in this programme.

We next considered whether Mr D was identifiable in the programme. We took into account Channel 5's submissions that, given Mr D was in a sensitive situation, it had taken all reasonable steps to mask his identity to ensure he was not identifiable. We also noted Channel 5's representations that, if a person's identity would have been unknown to the ordinary viewer, there could be no invasion of privacy. We further took into account Channel 5's submission that, although it accepted that the complainant would have a legitimate expectation of privacy in relation to unobscured footage of the incident, in this case, consistent with Ofcom's approach in its decision in *Ms K*, it did not consider that any expectation of privacy should arise in relation to the obscured footage, and if it did it would be limited, as Ofcom had found in respect of its decision in *Ms K*.

In considering the extent to which Mr D was identifiable in the programme, and the impact that this had in our assessment of his expectation of privacy, we took into account that Mr D was not named in the programme and his face was blurred. However, Mr D's voice was not disguised. In addition, the person who had filmed Mr D had not had their face obscured or voice disguised. We considered that the steps taken by the broadcaster may have limited the extent to which Mr D would have been identifiable to members of the wider public. In particular, we took into account Channel 5's view that it appeared only Mr D and his mother had identified him from the footage. However, it was our view that he may have been recognisable from the footage to people who already knew him and who may, or may not, have already had knowledge of the incident. Further, in light of the fact his voice was not disguised, and the identity of the perpetrator was not masked, there was still a risk of Mr D being identified to third parties.

We acknowledged that steps taken by a broadcaster to obscure an individual's identity in a programme, such as blurring, may limit the extent of the infringement into a person's legitimate expectation of privacy, at least to some extent. We recognised that in this case the broadcaster had taken some steps to limit the extent of the intrusion into Mr D's privacy by blurring his face (and that Channel 5 considered this to be in line with Practice 8.8 of the Code). However, Ofcom considers, depending on the circumstances, that a person's rights to privacy can be engaged even where they may not be identifiable to the wider public. This view is consistent with the judgment of Mann J in *BKM Limited v BBC*, as referred to by Channel 5 in its submissions, which makes clear that, depending on the circumstances, a person's privacy rights may be interfered with if they are shown in a sensitive situation, even if their image is completely pixilated or otherwise blurred out, and that it is possible in the event of pixilation that those depicted might still be identifiable by those who know them.⁸

⁸ See paragraphs 32 to 33 of that judgment. The example given in that case of circumstances in which it was suggested that there may be a breach of privacy rights "however heavily pixilated" was the depiction of a resident of a care home using a commode, whereas the judge said, conversely, there may be little invasion of privacy in respect of a resident "merely sitting the lounge" where they are shown heavily pixilated.

The judge also noted that the extent of pixilation will not be “automatically determinative” and the “circumstances are important”. Ofcom agrees, and has therefore assessed this case taking account of the particular factual circumstances.

In this case, in view of the sensitive nature of the footage broadcast, which showed Mr D being subjected to verbal abuse by a fellow inmate in his prison cell, after he had apparently been attacked, Ofcom considered that, despite the steps taken to obscure his identity, which may have meant he was only identifiable to a limited number of people who already knew him (though potentially also to third parties), the broadcast still represented an intrusion into his privacy.

In the circumstances, Ofcom considered that the facts of this case were very different to the facts of the case in *Ms K*⁹, in which Ofcom found that Ms K had only a limited legitimate expectation of privacy.

Taking all these factors into account, Ofcom considered that Mr D had a legitimate expectation of privacy with regard to the broadcast of the footage of him which showed him as the victim of an incident intended to humiliate and shame him, after he had apparently been attacked, being subjected to verbal abuse by a rival gang member.

We noted Channel 5's submission that the fact the broadcast was distressing to Mr D did not establish a relevant breach of any privacy right held by D.¹⁰ We consider that the fact that Ms C had said in her complaint that Mr D had been distressed by the broadcast indicates the impact that the intrusion into his privacy has on him and we therefore have discussed this below in considering whether the infringement of Mr D's privacy was “warranted”. However, we have not concluded that Mr D had a legitimate expectation of privacy as a result of the fact that he was distressed by the broadcast. Rather, in coming to this conclusion, we have had regard to the factors discussed above.

We took into account the broadcaster's statement that neither the programme makers nor the broadcaster were able to identify who the victim was in the footage and were therefore unable to obtain Mr D's consent to the broadcast of the footage of him in the programme. We therefore went on to consider whether the infringement of Mr D's legitimate expectation of privacy was “warranted”.

The Code states that “warranted” has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of broadcasting being in the public interest would include revealing or detecting crime, protecting the public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

⁹ See footnote 3 above.

¹⁰ As noted above, in support of this, Channel 5 cited a previous Ofcom decision, *Mrs B and Mr C*, in which Ofcom said that “distress alone is not sufficient to engage the complainants' privacy rights”. See footnote 5 above.

We carefully balanced Mr D's right to privacy with regard to the inclusion of the footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference.

We took into account Channel 5's response that there was public interest justification in the broadcast of this material in that it demonstrated to viewers an understanding of the ways in which gang members used social media, even while in prison, to punish and instil fear in their rivals and to enhance their own reputation. It also conveyed to viewers an understanding of the extent to which gang members were willing to go in order to punish and humiliate their rivals. We also took into account Channel 5's submission that *Inside the Gang* was a serious programme about the pernicious and unlawful effects and actions of gang members and that the footage of Mr D provided an actual example of an unjustifiable attack on a young person carried out because of gang culture for the purposes of demonstrating to the public and authorities that urgent action needed to be taken to ensure that such atrocities did not occur again. We also took account of Channel 5's submission that it also revealed the unlawful activities of certain gang members. We further took into account Channel 5's submission that there should be "weighty privacy interests" at stake to restrict Channel 5's and the audience's Article 10 rights in this case, which they considered there were not given the steps taken to obscure Mr D's identity in the footage broadcast.

We considered that the programme was a serious documentary which explored the consequences of gang activity. We also considered that the footage of Mr D was shown in a section of the programme which explored how social media is used by gangs to threaten, humiliate and shame members of rival gangs, even while they are in prison, and the consequences that this can have. Ofcom took the view that there was a genuine public interest in making programmes about the consequences of gang activity and the impact that this can have on the lives of those who are affected by it, and that broadcasters have editorial discretion to include challenging material to explore these issues, provided that this does not result in a breach of the Code.

We carefully considered whether the infringement of Mr D's right to privacy in connection with the broadcast of this footage outweighed the public interest in the broadcast of the footage as part of the programme. In doing so, we had regard to the sensitive nature of the situation in which the footage showed him – namely, that Mr D was shown sitting semi-naked in a prison cell being subjected to verbal abuse by a rival gang member after apparently having been attacked. We also took account of the steps taken by the broadcaster to limit the extent of the intrusion into Mr D's privacy by blurring his face, although, as stated above, we considered that despite those efforts, he may still have been identifiable to those who knew him (and potentially to third parties). In addition, while the footage may have been circulated on social media, we did not consider that this, in itself, resulted in Mr D being deprived of a right to privacy in relation to the footage of him. We also took into account that Ms C had said in making the complaint that Mr D's mental health had been affected by the broadcast of the footage and that he feared for his life as a result. We also took into account Channel 5's representations that the footage was more likely to have been seen by his fellow inmates from the online footage rather than in the programme as broadcast. However, we did not consider this was an important factor in weighing up whether the broadcaster was warranted to include the footage of Mr D in the programme. Given the above, we considered that the interference with Mr D's legitimate expectation of privacy was significant, particularly when having regard to the fact he was shown in his cell after he had apparently been the victim of an assault.

Having taken all the above factors into account and intensely focused on the comparative weight of Mr D's right to privacy and the broadcaster's right to freedom of expression, the audience's right to receive information and ideas about the matters explored by the programme and the public interest in broadcasting the footage of Mr D, Ofcom considered that the infringement of Mr D's right to privacy in the broadcast of the footage without his consent was not warranted in the particular circumstances of this case. On balance, we did not consider that the broadcaster's right to freedom of expression and the audience's right to receive information and ideas about the matters explored by the programme outweighed the intrusion into Mr D's right to privacy.

Therefore, Ofcom found that there was an unwarranted infringement of Mr D's privacy in the programme as broadcast.

Ofcom has upheld Ms C's complaint on behalf of Mr D of unwarranted infringement of privacy in the programme as broadcast.

Upheld

Complaint by Ms G on behalf of Mr H

Inside the Gang: Young Blood, Channel 5, 08 May 2017

Summary

Ofcom has upheld this complaint made by Ms G on behalf of her nephew, Mr H, of unwarranted infringement of privacy in the programme as broadcast.

The programme looked at the changing behaviour of gangs and how younger gang members used social media to share videos of violence towards and intimidation of rival gang members. Mr H, who was 14 years old at the time, was shown being told to strip naked and then being physically abused. He was not named in the programme and his face was blurred. In a brief response to his attackers, his voice was heard undisguised.

Ofcom found that Mr H had a legitimate expectation of privacy in relation to the broadcast of the footage of him and that this outweighed the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference, and the public interest in broadcasting the footage in this case. Therefore, Ofcom considered that Mr H's legitimate expectation of privacy was unwarrantably infringed in the programme as broadcast.

Programme summary

On 8 May 2017, Channel 5 broadcast an episode of *Inside the Gang*, an investigative documentary series looking at gang culture in the UK. This edition entitled *Young Blood*, looked at the changing behaviour of gangs and how younger members, known as "youngers", were using social media to share videos of violence towards, and intimidation of, rival gang members.

The programme's narrator said:

"A new trend is emerging of youngers using social media to publicly humiliate and shame their rivals".

The programme then included footage of the complainant's nephew, Mr H being told to take his clothes off by an unidentified gang member. Mr H's face was blurred throughout the sequence.

One of the gang members present told Mr H to:

"Take your track suit bottoms off blud, hurry up, hurry up man".

The narrator said:

"This video was shot by a gang on their phone after catching a 14 year old boy from another estate selling drugs on their block".

Mr H was then shown standing in his underpants as he was hit in the face with one of the shoes he had just taken off.

One of the gang members present then said:

"What the fuck you on bruv?"

Footage of Mr H taking down his underpants was shown, his genitals were blurred. One of the gang members present said:

"Take down your boxers blud, move your hand bruv, what did I tell you the last time? I told you to jump off this strip bruv, did I not say that?"

Mr H responded:

"Yes".

The footage then showed Mr H completely naked, holding his face. His face and genitals were blurred. He was hit again by someone holding an unidentified item.

One of the gang members present then said:

"Fucking mad bruv. Are you fucking mad? Why the fuck are you still here rude boy? Why the fuck are you still here?"

The footage then showed Mr H kneeling and then laying down on the ground. The narrator explained that the video was *"widely shared across social media, like WhatsApp and Instagram"*.

One of the gang members present was shown crouching down next to Mr H while speaking to a mobile phone:

"Yo, I've got your negro on the floor naked blud, what are you tellin' me?"

The sequence was followed by three masked young men sitting in a darkened stairwell discussing the increasing use of this type of footage on social media. No further footage of Mr H was included.

The footage of Mr H included in the programme lasted approximately 40 seconds. While his face was blurred throughout, his voice was heard undisguised.

Summary of the complaint and broadcaster's response

Ms G complained on behalf of Mr H that his privacy was unwarrantably infringed in the programme as broadcast because footage of him being asked to strip naked and physically abused was included in the programme without consent. She said that as the material had previously been widely circulated on social media, her nephew would have been identifiable from the programme even though his face was blurred.

Ms G said that the footage showed her nephew when he was 14 years old and in a state of distress and that the broadcast of it had caused him severe emotional distress. She explained

that although her nephew's assailants were in prison for the attack, he feared for his safety in that showing this footage could encourage other members of the gang to attack him.

Channel 5 said that it included the footage of Mr H in the programme to demonstrate the ways in which gang members used social media to punish and instil fear in their rivals while enhancing their own reputation. In particular, it showed that one gang had filmed a violent assault they had carried out on a member of another gang who trespassed on their territory, and that they had then distributed the footage on social media to humiliate him and entrench the sense of fear about crossing the line with them.

Channel 5 said the programme makers were sent the footage via WhatsApp by a gang member they had met while making the series. It said that the victim in the footage was not identified in the message sent to the programme makers and there was no way for them to identify, or contact the person who originally posted the video. The broadcaster added that the programme makers and Channel 5 had no idea who the young man was in the footage until it received the complaint.

Channel 5 added that during production, the programme makers became aware that the video had been shared on various social media outlets. However, it said that as far as the programme makers were aware, none of the places where it had been previously accessible were still accessible. It added that the footage had been widely circulated on social media prior to the broadcast, but added that it did not believe it was widely available at the time of, and directly after, broadcast, or appeared to be available online at the time this response was submitted to Ofcom.

Channel 5 said that, nevertheless, the victim in the footage was not identifiable in the broadcast and that no ordinary, reasonable viewer could possibly have identified the victim solely from the broadcast alone. The victim's face and genitals were heavily blurred. Channel 5 said that if any person was able to identify the victim from the footage shown, then it could only be because they already knew who the person was in the footage independently of the broadcast.

The broadcaster said that Article 10 of the European Convention on Human Rights ("ECHR") allowed the inclusion of the clip, edited to obfuscate the identity of the victim, in the broadcast as it clearly demonstrated an important and very serious theme the programme was exploring. It added that including the footage was in the clearest public interest in all the circumstances. It said that the programme raised important questions about official and societal responses to gang activity and that it contributed to the public discussion about how, why and whether current gang activity was tolerated, and whether responses to gangs were appropriate or needed to evolve or intensify.

Channel 5 said it regretted the understandable distress felt by the complainant's nephew and said that had it been possible to contact him and his family prior to broadcast, then it would have done so. However, it said that neither Channel 5 nor the programme makers knew the identity of the victim in the footage, or any way to contact him or his family.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations

on the Preliminary View. The complainant did not submit any representations. Channel 5 made the following representations.

Channel 5's representations

Channel 5 said that in case of *Peck v The United Kingdom*¹, when dealing with a case about CCTV footage of the aftermath of a person's suicide attempt in public, which had been broadcast without any attempt being made to mask the identity of the person, the European Court of Human Rights said:

"In sum, the Court does not find that, in the circumstances of this case, there were relevant or sufficient reasons which would justify the direct disclosure by the Council to the public of stills from the footage in (sic) own publication 'CCTV News' without obtaining the applicant's consent or **masking his identity**, or which justify its disclosures to the media without the Council taking steps to ensure so far as possible that such masking would be effected by the media". (Emphasis added by Channel 5)

Channel 5 said that taken together without other comments made by the Court, it was clear that the Court took the view that there would not have been any relevant invasion of privacy had the identity of Mr Peck been "masked" in the relevant broadcasts. The broadcaster added, that Ofcom having found that Mr H was not identified by the programme to members of the wider public, and that it was more likely than not that, to the extent he was identified at all, Mr H was identified only to people "likely to already have some knowledge of the incident", there could be no relevant invasion of his privacy.

Channel 5 said that where the identity of a person is unknown to the ordinary, reasonable viewer, there can be no breach of privacy rights. An individual's right to privacy is completely bound up in that person's identity. It said that unless an individual is identified in a broadcast or publication, their Article 8 rights, akin to their rights in libel or malicious falsehood, are simply not engaged.

Channel 5 said that there is no evidence that the programme identified Mr H to any person who did not already know him and know that there had been circulated on social media a video of him being abused and humiliated. It added that the only reference made to identification in the complaint was to telephone calls made to Mr H's aunt. The broadcaster said that the people who contacted her must have known her telephone number as there was no way to locate or identify her from the broadcast. Therefore, Channel 5 said that those who made contact with her must have been people who already knew about the incident and that the broadcast did not, and could not, have breached Mr H's privacy in relation to those people.

Channel 5 also referred to Practice 8.8² of Ofcom's Broadcasting Code ("the Code") which it said confirmed that non-identification of a person was a key step in avoiding breaches of privacy.

¹ [2003] 36 EHRR 41.

² "...in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). **If the individuals will not be identifiable in the programme then separate consent for broadcast will not be required**" (emphasis

The broadcaster said that Mr H was clearly in a sensitive situation. It said that because his identity was not known to Channel 5, and there was no way for Channel 5 to establish that identity, the only appropriate course open, and the one sanctioned by the Code, was to take all reasonable steps to mask Mr H's identity. It said that it had done this, and that Ofcom had found that Mr H was not identifiable. Channel 5 added that Ofcom's decision in the complaint made by Ms K³ supported this approach. In particular, it identified that Ofcom had said:

"We noted that Ms K was not named in the programme nor was her voice heard in the CCTV footage. We also noted the techniques used to disguise Ms K's identity in the programme, i.e. her face was obscured. We also considered that there was nothing particularly distinctive about her physical appearance and clothing that could be reasonably regarded as rendering her identifiable to ordinary viewers. Further, we also noted that the man was not named in the programme, his voice was not heard in the CCTV footage, his face was obscured and there was nothing particularly distinctive about his physical appearance or clothing to identify him to ordinary viewers. **As such, we took the view that it was not possible for ordinary viewers to identify Ms K through any association she may have had with the man. Further, the tower block in which the lift was situated was not identified. Nevertheless, we considered that the limited information given about the location of the tower block and the inclusion of the footage of Ms K (which she said people had recognised her from) may have made her identifiable to a very limited number of individuals who already knew her. Therefore, the extent of any infringement into Ms K[s] already limited expectation of privacy was limited**". (Emphasis added by Channel 5).

Channel 5 said that similar considerations applied in this case. It said that while Mr H's expectation of privacy in relation to unobscured footage of the incident would be high, it was difficult to see why any expectation of privacy ought to arise in relation to the obscured footage and certainly no expectation higher than that enjoyed by Ms K. Further, it said that the public interest in the programme, *Inside the Gang*, would be higher and stronger than the public interest in the programme which was the subject of Ms K's complaint.

Channel 5 said that if the Preliminary View was maintained then Ofcom was effectively stating that the footage of Mr H could never be broadcast. It said that it was "difficult to imagine a scenario where the editorial context and Article 10 justification for inclusion of the obscured footage could be higher than in the case of this programme, *Inside the Gang*". Channel 5 said that it was a serious programme about the pernicious and unlawful effects and actions of gang members. Channel 5 added that "if the public interest in that programme was not sufficiently high to outweigh any interest Mr [H] might have in the obscured footage, what sort of programming could?"

The broadcaster said that the footage of Mr H in the broadcast was not included lightly and was not used inappropriately. It added that the footage was an actual example of a horrific attack on a young person carried out because of gang culture. Channel 5 stated that the purpose of including the footage was to demonstrate to parents and the authorities that urgent action needed to be taken to ensure that such "atrocities" did not occur again.

added by Channel 5).

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0017/45440/issue275.pdf

The broadcaster said that the footage did not reveal Mr H's identity, but did reveal the unlawful activities of certain gang members, which, it said, was in the "clearest public interest".

Channel 5 said that there was no doubt that Mr H would have found it distressing to view the footage included in the programme. However, it said that the fact the broadcast was distressing to Mr H, or those in his family did not establish a relevant breach of any privacy right held by Mr H. Channel 5 referred to Lord Hope's view in *Campbell v MGN Ltd*⁴ that the law of privacy was not designed to protect the unduly sensitive and that if it were otherwise, privacy would become an unacceptable chilling effect on free speech. The broadcaster added that Ofcom had recognised this in its Adjudication on the complaint made by *Mrs B and Mr C*⁵ in which Ofcom said: "distress alone is not sufficient to engage the complainants' privacy rights". It added that Channel 5 agreed with Ofcom's view and said that Mr H's distress, however keenly felt, was insufficient to establish a breach of his privacy rights.

Channel 5 said that the Preliminary View suggested that Ofcom had not followed the well-established methodology of the case law of the European Court of Human Rights in relation to the balancing of Article 8 and Article 10 rights.

Channel 5 said that the first issue, to which the case law attributes particular importance, is whether the information is capable of contributing to a debate of general interest, there being little scope under Article 10 for restrictions on freedom of expression when a matter of public interest is at stake. It added that the decisive question was whether the broadcast was capable of contributing to a debate of public interest. It said that Ofcom had found that it did.

The broadcaster said that where the subject matter of the broadcast contained information which was of public interest, and the broadcast of the material was capable of contributing to a debate of general interest, this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of expression, i.e. broadcasting the obscured footage of the unlawful and brutal attack of Mr H, was also protected under Article 10. Channel 5 cited the case *Jersild v Denmark*⁶ which emphasised that it is not for national authorities to:

"...substitute their own views for those of the press as to what techniques of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed".

The broadcaster said that the Article 10 rights of Channel 5 and the programme maker to impart, and the audience to receive, the information in *Inside the Gang* weigh heavily in the balancing exercise. Channel 5 said there must be very weighty privacy interests at stake if any restriction is to be placed on Article 10 rights, which there were not in the case of

⁴ [2004] 2 AC 457.

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0018/50436/issue_284.pdf

⁶ [1994]19 EHRR 1.

obscured footage of the attack on Mr H. Channel 5 said it would be entirely different if the footage had been broadcast unobscured.

Channel 5 said that there can be no criticism of the way in which Channel 5 and the programme maker obtained the material in this case. It said that the material was factually accurate and self-evidently so. Channel 5 said that it proceeded on the basis of the wording of the Code, Ofcom's previous decisions interpreting the relevant parts of the Code in the context of fairness complaints concerning footage involving obscured persons, and in complete good faith. It added that it was impossible for the Mr H and his family to have been warned in advance of the broadcast.

Channel 5 said that this was not a case where it had acted recklessly, or had ignored the interests of Mr H. It said that he had been properly obscured, in accordance with long-standing conventions, in the footage so that he would be unidentifiable.

Channel 5 said that properly considered, the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of Mr H obscured so as not to breach his Article 8 rights, and such Article 8 rights as might arise in relation to the obscured footage.

The broadcaster said that in the complaint made by *Ms K* (referred to above), Ofcom found that the public interest outweighed any interest arising from obscured footage. Channel 5 said that there seems no reason in principle for a different conclusion to be reached in this case.

Channel 5 also cited Mann J in *BKM Limited v BBC*⁷:

"Miss Heal has a limited point. She may well be right about any broadcast of, for example, a resident's use of a commode is a contravention of his or her privacy and dignity rights, however heavily pixilated. On the other hand, there is little if any invasion of privacy if a resident merely sitting in the lounge is shown heavily pixilated (of course the act of filming will probably already have been an invasion, but that is not the immediately relevant point). And in any event, these factors are not automatically determinative of the significance of the invasion of privacy. The circumstances are important. Consent is obviously important, and if present would be determinative. But its absence does not determine the case the other way.

Thus, it may be that contraventions of the Article 8 rights are not completely removed by taking cinematic steps to obscure the identities of those depicted. That is both for the reason given above, and because (as the trailer broadcast indicated) residents might still be identifiable by those who know them and who know they are in the home, though in many cases if that is the extent of the identification then the privacy infringement may be very slight. However, that does not mean that those means are irrelevant. **The level of an invasion of privacy is relevant to the balancing act that I have to perform. An invasion of privacy should not be allowed beyond that which is necessary in the public interest. It is hard to imagine that the public interest would ever justify the un-pixilated broadcasting of an image of a resident using a commode. It might well justify broadcasting a heavily obscured image. Other examples can be given. So, one cannot say that any portrayal of the residents will give rise to a sufficiently serious**

⁷ [2009] EWHC 3151 (Ch).

infringement of privacy rights to outweigh any public interest justification coupled with Article 10 rights” (Emphasis added by Channel 5).

Channel 5 concluded that it did not believe that any breach of the Code was involved in the broadcast of the programme.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript of it, and both parties' written submissions. Ofcom also took careful account of the representations made by Channel 5 in response to Ofcom's Preliminary View.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code, which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

In addition to this rule, Section Eight (Privacy) of the Code contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

We considered the complaint that Mr H's privacy was unwarrantably infringed in the programme as broadcast because footage of him being asked to strip naked and physically abused was included in the programme without consent. The complainant said that as the material had previously been widely circulated on social media, Mr H would have been identifiable from the programme even though his face was blurred.

Practice 8.6 states:

“if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted”.

Practice 8.20 states:

“broadcasters should pay particular attention to the privacy of people under sixteen”.

Practice 8.21 states:

“where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from:

- a parent, guardian or other person of eighteen or over in loco parentis; and,
- wherever possible, the individual concerned;
- unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent”.

We assessed the extent to which Mr H had a legitimate expectation of privacy in relation to footage of him being included in the programme without his consent.

Ofcom considers that the test applied as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its facts and applied this approach in considering this complaint.

In considering the complaint made on behalf of Mr H, we took into account that although Mr H is now over 16, the footage showed him when he was 14 years old. While the incident appeared to have happened in a public place and in full view of any members of the public who may have been in the area at the time, it showed him being subjected to a humiliating and violent attack, which was a deliberate step by a rival group to humiliate and shame him. He was made to strip naked in front of the camera and was subjected to verbal and physical abuse. We therefore considered that the footage showed Mr H in a highly sensitive situation and that he had a legitimate expectation of privacy in the material as broadcast. In reaching this view, we took particular account of the fact that he was 14 years old at the time he was filmed and that he was shown naked, with his face and genitals obscured. In Ofcom's view, the interference caused to Mr H's privacy was very significant.

We also recognised that the broadcaster said that the footage of Mr H had been circulated on social media platforms prior to the broadcast of the programme, but that since the broadcast, the video appeared to be no longer accessible from these places. In our view, people are not necessarily deprived of their right to privacy if information, in respect of which they claim that right, has been put in the public domain in the past. Each case must be considered on its own facts.

In the circumstances of this case, we considered that it was unlikely that Mr H would have chosen to circulate this footage himself, or that he had consented to it being shared on social media in the first instance. In addition, we took into account that the incident had taken place two years ago and that the footage no longer appeared to be available on social media.

Ofcom therefore did not consider that the availability of the footage in the public domain meant that Mr H would have been deprived of his right to privacy in connection with the broadcast of the footage in this programme.

We next considered whether Mr H was identifiable in the programme. We took into account Channel 5's submissions that, given Mr H was in a sensitive situation, it had taken all reasonable steps to mask his identity to ensure he was not identifiable. We also noted Channel 5's representations that, that if a person's identity would have been unknown to the ordinary viewer, there could be no invasion of privacy. We further took into account Channel 5's submission that, although it accepted that the complainant may have a legitimate expectation of privacy in relation to unobscured footage of the incident, in this case, consistent with Ofcom's approach in its decision in *Ms K*, it did not consider that any expectation of privacy should arise in relation to the obscured footage, and if it did it would be limited, as Ofcom had found in respect of its decision in *Ms K*.

In considering the extent to which Mr H was identifiable in the programme, and the impact that this had in our assessment of his expectation of privacy, we took into account that Mr H's face was blurred and that he was not named in the programme. We also recognised that although the programme did not state when the footage had been filmed, it said that it showed a 14 year old boy being attacked by rival gang members. The programme also did not state the area where the incident took place, nor did it name the gangs involved, although based on the fact that the majority of the people shown in the programme were from parts of London, it was likely that viewers would have assumed that the incident had taken place somewhere in the London area. We also took into account that Mr H's undisguised voice was heard in the programme, although we recognised that he was only heard saying "yes", and that the full length of his body, with his genitals blurred, was shown. We also considered that while the faces of two of the gang members who verbally and physically abused Mr H were obscured, their voices were not disguised, which potentially may have made Mr H identifiable by association.

Given the steps taken by the broadcaster, we considered that the programme did not identify Mr H to members of the wider public. To the extent that Mr H may have been identifiable from the footage in programme, we considered that this would only have been to a limited number of people who already knew him and were likely to already have knowledge of this incident.

We acknowledged that steps taken by a broadcaster to obscure an individual's identity in a programme, such as blurring, may limit the extent of the infringement into a person's legitimate expectation of privacy, at least to some extent. We recognised that in this case the broadcaster had taken some steps to limit the extent of the intrusion into Mr H's privacy by blurring his face and his genitals (and that Channel 5 considered this to be in line with Practice 8.8 of the Code). However, Ofcom considers, depending on the circumstances, a person's rights to privacy can still be engaged even where they may not be identifiable to the wider public, particularly where the individual might still be identifiable to those who know them. This view is consistent with the judgment of Mann J in *BKM Limited v BBC*, as referred to by Channel 5 in its submissions, which makes clear that, depending on the circumstances, a person's privacy rights may be interfered with if they are shown in a sensitive situation, even if their image is completely pixilated or otherwise blurred out, and that it is possible in the event of pixilation that those depicted might still be identifiable by those who know

them.⁸ The judge also noted that the extent of pixilation will not be “automatically determinative” and the “circumstances are important”. Ofcom agrees, and has therefore assessed this case taking account of the particular factual circumstances.

In this case, in view of the highly sensitive nature of the footage broadcast, in which Mr H was shown naked and subjected to a humiliating and violent attack intended to shame him, Ofcom considered that, despite the steps taken to obscure his identity, which may have meant he was only identifiable to a limited number of people who already knew him, the broadcast still represented a very significant intrusion into his privacy. In the circumstances, Ofcom considered that the facts of this case were very different to the facts of the case in *Ms K*⁹, in which Ofcom found that Ms K had only a limited legitimate expectation of privacy.

Therefore, taking all of the above factors into account, it was our view that Mr H had a legitimate expectation of privacy in relation to the broadcast of the footage of him being subjected to verbal and physical abuse, and that the broadcast represented a very significant intrusion into his privacy.

We noted Channel 5's submission that the fact the broadcast was distressing to Mr H did not establish a relevant breach of any privacy right held by Mr H.¹⁰ We consider that the fact that Ms G had said in her complaint that Mr H had been distressed by the broadcast indicates the impact that the intrusion into his privacy has on him and we therefore have discussed this below in considering whether the infringement of Mr H's privacy was “warranted”. However, we have not concluded that Mr H had a legitimate expectation of privacy as a result of the fact that he was distressed by the broadcast. Rather, in coming to this conclusion, we have had regard to the factors discussed above.

We took into account the broadcaster's statement that neither it nor the programme makers were able to identify who the victim was in the footage and were therefore unable to obtain Mr H's consent to the broadcast of the footage of him. Ofcom therefore went on to consider whether the infringement of Mr H's legitimate expectation of privacy was “warranted”.

The Code states that “warranted” has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of broadcasting being in the public interest would include revealing or detecting crime, protecting the public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

⁸ See paragraphs 32 to 33 of that judgment. The example given in that case of circumstances in which it was suggested that there may be a breach of privacy rights “however heavily pixilated” was the depiction of a resident of a care home using a commode, whereas the judge said, conversely, there may be little invasion of privacy in respect of a resident “merely sitting the lounge” where they are shown heavily pixilated.

⁹ See footnote 3 above.

¹⁰ As noted above, in support of this, Channel 5 cited a previous Ofcom decision, *Mrs B and Mr C*, in which Ofcom said that “distress alone is not sufficient to engage the complainants' privacy rights”. See footnote 5 above.

We carefully balanced Mr H's right to privacy with regard to the inclusion of the relevant footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference.

We took into account Channel 5's response that there was a public interest justification in the broadcast of the footage of Mr H in that it demonstrated to viewers an understanding of the ways in which gang members behaved when a rival gang member was found in their territory and the manner in which this information was shared on social media as a warning to other gangs about the potential consequences of their actions. We also took into account Channel 5's submission that *Inside the Gang* was a serious programme about the pernicious and unlawful effects and actions of gang members and that the footage of Mr H provided an actual example of a horrific attack on a young person carried out because of gang culture for the purposes of demonstrating to parents and the authorities that urgent action needed to be taken to ensure that such atrocities did not occur again. We further took into account Channel 5's submission that there should be "weighty privacy interests" at stake to restrict Channel 5's and the audience's Article 10 rights in this case, which they considered there were not given the steps taken to obscure Mr H's identity in the footage broadcast.

We considered that the programme was a serious documentary which explored the consequences of gang activity, and in particular the involvement of younger children in gangs, and the adverse consequences that this could have on them. We also took into account that the footage of Mr H was shown in a section of the programme which explored how social media is used by gangs to threaten and humiliate members of rival gangs, and the consequences that that can have. Ofcom considered that there was a genuine public interest in making programmes about the consequences of gang activity and the impact that this can have on the lives of those, including children, who are affected by it, and that broadcasters have editorial discretion to include challenging material to explore these issues, provided that this does not result in a breach of the Code.

In considering whether the broadcast of the footage of Mr H unwarrantably infringed his privacy or whether the public interest in broadcasting the footage outweighed Mr H's rights to privacy, we also took into account all the relevant factors set out above, including, Mr H's age, both at the time he was filmed and at the time the programme was broadcast, and that the footage showed him as a victim of a violent and humiliating attack sustained while he was naked. We also took into account the steps taken by the broadcaster to limit the intrusion into Mr H's privacy by blurring his face. As noted above, we recognise that blurring can limit to some degree the extent of the infringement into a person's legitimate expectation of privacy. Yet we considered that despite the efforts taken to obscure Mr H's identity in this case, he may still have been identifiable to those who knew him or were aware that he had been the subject to this attack. Also, although the footage may have been circulated on social media, we did not consider this limited the extent to which Mr H had a right to privacy in relation to the sensitive footage of him. We also took account that Ms G had said in her complaint that Mr H had been distressed by the broadcast of the footage and was concerned that he might face reprisals from "gang associates" as a result. Taking all the above factors into consideration, we considered that, given the extremely sensitive nature of the footage broadcast, and in particular having regard to Mr H's age at the time, the interference with his legitimate expectation of privacy was very significant, despite the steps that had been taken to obscure his identity.

Having taken all the above factors into account and intensely focused on the comparative weight of Mr H's right to privacy and the broadcaster's right to freedom of expression, the

audience's right to receive information and ideas about the matters explored by the programme and the public interest in broadcasting the footage of him in the programme, Ofcom considered that the infringement of Mr H's right to privacy in the broadcast of the footage without his consent was not warranted in the particular circumstances of this case. On balance, we did not consider that the broadcaster's right to freedom of expression and the audience's right to receive information and ideas about the matters explored by the programme outweighed the very significant intrusion into Mr H's right to privacy.

Therefore, Ofcom found that there was an unwarranted infringement of Mr H's privacy in the programme as broadcast.

Ofcom has upheld Ms G's complaint, made on behalf of her nephew, Mr H, of unwarranted infringement of privacy in the programme as broadcast.

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 26 February and 11 March 2018 because they did not raise issues warranting investigation.

Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

Programme	Service	Transmission Date	Categories	Number of complaints
Trending Live	4Music	26/02/2018	Sexual material	1
Programming	Absolute 80s	13/02/2018	Materially misleading	1
Frank Skinner	Absolute Radio	24/02/2018	Gender discrimination/offence	1
Under the Knife	BBC Brit	08/02/2018	Generally accepted standards	1
PC Gone Mad	Beyond Radio	12/02/2018	Offensive language	2
Jingle	Bob FM	19/02/2018	Generally accepted standards	1
Teen Titans Go	Cartoon Network	27/02/2018	Race discrimination/offence	1
Australian Ninja Warrior	Challenge	25/02/2018	Scheduling	1
24 Hours in Police Custody	Channel 4	05/03/2018	Generally accepted standards	10
Channel 4 News	Channel 4	05/02/2018	Due accuracy	1
Channel 4 News	Channel 4	11/02/2018	Due accuracy	1
Channel 4 News	Channel 4	27/02/2018	Due impartiality/bias	2
Channel 4 News	Channel 4	28/02/2018	Due impartiality/bias	1
Channel ident	Channel 4	01/03/2018	Dangerous behaviour	1
FGM Detectives	Channel 4	27/02/2018	Due accuracy	1
Gogglebox	Channel 4	23/02/2018	Generally accepted standards	1
Gogglebox	Channel 4	23/02/2018	Offensive language	1
Hollyoaks	Channel 4	15/02/2018	Materially misleading	1
How to Get Fit Fast	Channel 4	27/02/2018	Generally accepted standards	1
Jamie and Jimmy's Friday Night Feast	Channel 4	02/03/2018	Generally accepted standards	1
The First Brit: The 10,000 Year Old Man	Channel 4	18/02/2018	Due accuracy	1
The Last Leg	Channel 4	16/02/2018	Generally accepted standards	1
The Simpsons	Channel 4	22/02/2018	Offensive language	3
The Simpsons	Channel 4	06/03/2018	Suicide and self harm	1
Channel ident	Channel 4 +1	07/03/2018	Crime and disorder	1

Programme	Service	Transmission Date	Categories	Number of complaints
Can't Pay? We'll Take it Away!	Channel 5	27/02/2018	Generally accepted standards	1
Can't Pay? We'll Take it Away!	Channel 5	08/03/2018	Gender discrimination/offence	1
HSBC advertisement	Channel 5	02/03/2018	Political advertising	1
Neighbours	Channel 5	05/03/2018	Sexual material	1
The Big Freeze	Channel 5	01/03/2018	Generally accepted standards	1
The Wright Stuff	Channel 5	27/02/2018	Due impartiality/bias	2
The Wright Stuff	Channel 5	06/03/2018	Generally accepted standards	7
Horrid Henry	CITV	24/02/2018	Generally accepted standards	1
Wishfart	CITV	04/03/2018	Offensive language	1
Wallander	Drama	03/03/2018	Animal welfare	1
Celebs Go Dating	E4	28/02/2018	Generally accepted standards	2
Naked Attraction	E4	25/02/2018	Generally accepted standards	1
Gavin and Stacey	Gold	11/02/2018	Offensive language	1
Gavin and Stacey	Gold	11/02/2018	Scheduling	1
Sian Welby	Heart FM	01/03/2018	Offensive language	1
Ant and Dec's Saturday Night Takeaway	ITV	24/02/2018	Generally accepted standards	2
Ant and Dec's Saturday Night Takeaway	ITV	03/03/2018	Competitions	3
Ant and Dec's Saturday Night Takeaway	ITV	03/03/2018	Offensive language	1
Benidorm	ITV	28/02/2018	Generally accepted standards	1
Benidorm	ITV	28/02/2018	Race discrimination/offence	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	Various	Sponsorship credits	1
Coronation Street	ITV	16/02/2018	Sexual material	3
Coronation Street	ITV	19/02/2018	Materially misleading	7
Coronation Street	ITV	22/02/2018	Generally accepted standards	1
Coronation Street	ITV	23/02/2018	Generally accepted standards	1
Coronation Street	ITV	23/02/2018	Violence	1
Coronation Street	ITV	25/02/2018	Generally accepted standards	1
Coronation Street	ITV	26/02/2018	Offensive language	1

Programme	Service	Transmission Date	Categories	Number of complaints
Coronation Street	ITV	05/03/2018	Generally accepted standards	3
Coronation Street	ITV	07/03/2018	Generally accepted standards	1
Coronation Street	ITV	Various	Materially misleading	1
Dancing on Ice	ITV	25/02/2018	Generally accepted standards	2
Dancing on Ice	ITV	04/03/2018	Advertising/editorial distinction	1
Emmerdale	ITV	06/02/2018	Drugs, smoking, solvents or alcohol	1
Emmerdale	ITV	06/02/2018	Generally accepted standards	1
Emmerdale	ITV	08/02/2018	Violence	366
Emmerdale	ITV	14/02/2018	Generally accepted standards	1
Emmerdale	ITV	14/02/2018	Sexual material	3
Emmerdale	ITV	15/02/2018	Violence	12
Emmerdale	ITV	16/02/2018	Materially misleading	1
Emmerdale	ITV	20/02/2018	Sexual material	1
Emmerdale	ITV	22/02/2018	Sexual material	7
Emmerdale	ITV	23/02/2018	Generally accepted standards	3
Emmerdale	ITV	06/03/2018	Race discrimination/offence	1
Emmerdale	ITV	06/03/2018	Violence	1
Endeavour	ITV	18/02/2018	Disability discrimination/offence	1
Endeavour	ITV	25/02/2018	Race discrimination/offence	1
Ex On the Beach	ITV	01/01/2016	Race discrimination/offence	1
Good Morning Britain	ITV	15/02/2018	Generally accepted standards	1
Good Morning Britain	ITV	26/02/2018	Due impartiality/bias	1
Good Morning Britain	ITV	26/02/2018	Generally accepted standards	2
Good Morning Britain	ITV	27/02/2018	Generally accepted standards	2
Good Morning Britain	ITV	08/03/2018	Competitions	1
ITV Evening News	ITV	21/02/2018	Generally accepted standards	1
ITV News	ITV	15/02/2018	Due impartiality/bias	1
ITV News	ITV	21/02/2018	Due impartiality/bias	1

Programme	Service	Transmission Date	Categories	Number of complaints
ITV News	ITV	21/02/2018	Religious/Beliefs discrimination/offence	1
ITV News	ITV	26/02/2018	Due impartiality/bias	1
ITV News	ITV	04/03/2018	Due impartiality/bias	1
James Martin's Saturday Morning	ITV	17/02/2018	Animal welfare	1
Loose Women	ITV	16/02/2018	Gender discrimination/offence	1
Loose Women	ITV	27/02/2018	Generally accepted standards	1
Loose Women	ITV	01/03/2018	Generally accepted standards	1
Loose Women	ITV	02/03/2018	Generally accepted standards	2
Loose Women	ITV	06/03/2018	Generally accepted standards	2
Marcella	ITV	19/02/2018	Generally accepted standards	2
Marcella	ITV	26/02/2018	Animal welfare	16
Marcella	ITV	26/02/2018	Generally accepted standards	4
Marcella	ITV	05/03/2018	Generally accepted standards	1
Marcella	ITV	05/03/2018	Offensive language	1
Scrambled	ITV	25/02/2018	Generally accepted standards	1
The Brit Awards 2018	ITV	21/02/2018	Crime and disorder	1
The Brit Awards 2018	ITV	21/02/2018	Due impartiality/bias	1
The Chase	ITV	25/02/2018	Generally accepted standards	3
The Chase	ITV	28/02/2018	Competitions	29
The Chase	ITV	01/03/2018	Competitions	1
The Chase	ITV	01/03/2018	Disability discrimination/offence	1
The Jeremy Kyle Show (trailer)	ITV	02/03/2018	Animal welfare	1
The Kyle Files	ITV	05/03/2018	Dangerous behaviour	1
The Kyle Files	ITV	05/03/2018	Drugs, smoking, solvents or alcohol	1
This Morning	ITV	14/02/2018	Generally accepted standards	2
This Morning	ITV	20/02/2018	Sexual material	1
This Morning	ITV	22/02/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Through The Keyhole	ITV	24/02/2018	Generally accepted standards	1
Tipping Point	ITV	21/02/2018	Competitions	1
Tonight – Trans Kids: The Right Response	ITV	22/02/2018	Due accuracy	2
Tonight – Trans Kids: The Right Response	ITV	22/02/2018	Due impartiality/bias	1
Tonight – Trans Kids: The Right Response	ITV	22/02/2018	Sexual material	1
Trauma	ITV	14/02/2018	Generally accepted standards	1
Welsh Paedophile Hunters (trailer)	ITV	25/02/2018	Scheduling	1
What Would Your Kid Do?	ITV	20/02/2018	Race discrimination/offence	1
What Would Your Kid Do?	ITV	27/02/2018	Generally accepted standards	4
You've Been Framed	ITV	03/02/2018	Disability discrimination/offence	12
You've Been Framed	ITV	03/03/2018	Race discrimination/offence	1
Serial Killer with Piers Morgan Murders that Shocked the Nation World's Most Evil Killers Born to Kill? Murder Detectives	ITV / Pick TV / Really / Tru TV	01/03/2018	Generally accepted standards	1
London Tonight	ITV London	08/02/2018	Due impartiality/bias	1
London Tonight	ITV London	22/02/2018	Due accuracy	1
Celebrity Juice	ITV2	28/02/2018	Generally accepted standards	1
Survival of the Fittest	ITV2	21/02/2018	Offensive language	2
Survival of the Fittest	ITV2	23/02/2018	Gender discrimination/offence	1
Who's Doing the Dishes?	ITV2	02/03/2018	Transgender discrimination/offence	1
You've Been Framed	ITV2	26/02/2018	Crime and disorder	1
You've Been Framed	ITV2	28/02/2018	Generally accepted standards	2
Juice Breakfast: Lou & Alex	Juice FM Brighton	05/02/2018	Offensive language	1
Botched	Kanal 11 (Sweden)	26/02/2018	Gender discrimination/offence	1
Fråga Olle	Kanal 11 (Sweden)	15/02/2018	Gender discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Våra Pinsamma Kroppar	Kanal 11 (Sweden)	26/02/2018	Gender discrimination/offence	1
Competition	Kiss FM	24/01/2018	Competitions	1
Maajid Nawaz	LBC 97.3 FM	03/02/2018	Generally accepted standards	1
Maajid Nawaz	LBC 97.3 FM	03/03/2018	Sexual material	1
Matt Frei	LBC 97.3 FM	24/02/2018	Race discrimination/offence	1
Nick Abbot	LBC 97.3 FM	23/02/2018	Sexual orientation discrimination/offence	1
Nick Ferrari	LBC 97.3 FM	23/02/2018	Race discrimination/offence	2
Steve Allen	LBC 97.3 FM	04/02/2018	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	22/02/2018	Disability discrimination/offence	1
TFL advertisements	LBC 97.3 FM	01/03/2018	Political advertising	1
Manoranjan	Lyca Dil Se 1035AM	01/02/2018	Religious/Beliefs discrimination/offence	1
Four In a Bed	More4	22/02/2018	Generally accepted standards	1
Rebecka Martinsson: Arctic Murders	More4	02/03/2018	Violence	1
iCarly	Nickelodeon	03/03/2018	Violence	1
Cop Squad UK	Pick TV+1	09/03/2018	Privacy	1
The Chris Moyles Show	Radio X	14/02/2018	Generally accepted standards	1
News	Samaa	01/03/2018	Race discrimination/offence	1
Richard E Grant's Hotel Secrets	Sky Atlantic	07/03/2018	Offensive language	1
All Out Politics	Sky News	15/02/2018	Due impartiality/bias	1
Sky News	Sky News	23/02/2018	Due accuracy	1
Sky News	Sky News	23/02/2018	Generally accepted standards	1
Sky News	Sky News	25/02/2018	Generally accepted standards	1
Sky News	Sky News	28/02/2018	Due impartiality/bias	1
Sky News	Sky News	05/03/2018	Dangerous behaviour	1
The Pledge	Sky News	22/02/2018	Generally accepted standards	1
Live Carabao Cup: Arsenal v Manchester City	Sky Sports Main Event	25/02/2018	Generally accepted standards	3
Top Picks	Sky TV EPG	23/02/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Bliss	Sky1	28/02/2018	Suicide and self harm	1
The Russell Howard Hour	Sky1	06/12/2017	Generally accepted standards	1
Eamon Holmes	Talk Radio	13/02/2018	Due accuracy	1
Julia Hartley Brewer	Talk Radio	15/02/2018	Due impartiality/bias	1
Spooks Run Wild	That's Thames Valley	27/01/2018	Race discrimination/offence	1
That's My Boy	TV6 Sweden	02/02/2018	Sexual material	1
News: UTV Live	UTV	21/02/2018	Sexual material	1
UTV Live	UTV	16/02/2018	Generally accepted standards	1
Earth's Natural Wonders	Yesterday	22/02/2018	Violence	1

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 26 February and 11 March 2018 because they did not raise issues warranting investigation.

Programme	Service	Transmission Date	Categories	Number of complaints
BBC News	BBC 1	03/10/2017	Other	1
BBC News	BBC 1	12/11/2017	Other	1
India's Partition: The Forgotten Story	BBC 2	22/08/2017	Due impartiality/bias	1
Programming	BBC Radio 4	11/05/2017	Charity appeals	1
The World Tonight	BBC Radio 4	15/12/2017	Due accuracy	1
Today	BBC Radio 4	11/11/2017	Materially misleading	1
Woman's Hour	BBC Radio 4	13/10/2017	Race discrimination/offence	1

For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

Complaints outside of remit

Complaints about television, radio or on demand services

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service that does not fall within the scope of regulation.

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	Absolute Radio	05/03/2018	Advertising content	1
n/a	All4	n/a	Provision of licensed service	1
Advertisement	Channel 4	26/02/2018	Advertising content	1
n/a	Channel 4 HD (Freesat)	n/a	Provision of licensed service	7
Advertisement	Channel 5	n/a	Advertising content	1
Advertisement	E4	28/02/2018	Advertising content	1
Advertisement	Fosse 107FM	02/03/2018	Advertising content	1
Advertisement	Heart Radio	02/03/2018	Advertising content	1
Qom Studio Hour	Hidayat TV	07/03/2018	Outside of remit	1
Advertisements	Horror+1	27/02/2018	Advertising placement	1
Advertisement	ITV	22/02/2018	Advertising content	1
Advertisement	ITV	27/02/2018	Advertising content	1
Advertisements	ITV	06/03/2018	Advertising content	2
Advertisements	ITV	01/03/2018	Advertising content	1
Advertisement	ITV	19/02/2018	Advertising content	1
ITV News	ITV	02/03/2018	Other	1
Advertisement	ITV2	25/02/2018	Advertising content	1
Advertisement	More4	23/02/2018	Advertising content	1
Advertisements	n/a	03/03/2018	Advertising content	1
Advertisement	Nick Jr	06/03/2018	Advertising content	1
Un Bore Mercher	S4C	05/11/2017	Outside of remit	1
Sky News	Sky News	26/02/2018	Outside of remit	1
Advertisement	Smooth Radio	27/02/2018	Advertising content	1
Advertisements	True movies	27/02/2018	Advertising placement	1
Advertisement	UTV	05/03/2018	Advertising content	1
UTV Live	UTV	23/02/2018	Generally accepted standards	1
Advertisements	Various	04/03/2018	Advertising content	1
Advertisements	Various	07/03/2018	Advertising content	1

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

BBC First

The BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the independent regulator of the BBC.

Under the BBC Agreement, Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision (the 'BBC First' approach).

The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC	01/03/2018	Due impartiality/bias	1
BBC News	BBC	Various	Due impartiality/bias	1
Programming	BBC	Various	Due impartiality/bias	1
BBC Newsline	BBC 1	23/02/2018	Generally accepted standards	1
Countryfile	BBC 1	25/02/2018	Generally accepted standards	2
EastEnders	BBC 1	05/03/2018	Generally accepted standards	1
My Brother the Devil	BBC 1	04/03/2018	Crime and disorder	1
News programmes	BBC 1	03/03/2018	Due impartiality/bias	1
Panorama	BBC 1	22/02/2018	Due accuracy	1
Panorama – Evicted for no Reason	BBC 1	21/02/2018	Due impartiality/bias	1
Question Time	BBC 1	01/02/2018	Due impartiality/bias	1
Question Time	BBC 1	15/02/2018	Due impartiality/bias	1
Six Nations: France v Italy	BBC 1	23/02/2018	Advertising/editorial distinction	1
The Andrew Marr Show	BBC 1	18/02/2018	Due impartiality/bias	1
The Graham Norton Show	BBC 1	23/02/2018	Due impartiality/bias	1
Weinstein: The Inside Story	BBC 1	01/03/2018	Due impartiality/bias	1
BBC Newsline	BBC 1 Northern Ireland	16/02/2018	Generally accepted standards	1
Mock the Week	BBC 2	24/01/2018	Generally accepted standards	1
Only Connect	BBC 2	05/03/2018	Undue prominence	1
Programming	BBC 2	25/02/2018	Due impartiality/bias	1
The Mash Report	BBC 2	01/02/2018	Generally accepted standards	1
The Mash Report	BBC 2	25/02/2018	Race discrimination/offence	3

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Mum	BBC 4	20/02/2018	Offensive language	1
Rent for Sex: Ellie Undercover	BBC iPlayer	01/03/2018	Due impartiality/bias	1
Top Gear	BBC iPlayer	05/03/2018	Generally accepted standards	1
From Our Own Correspondent	BBC Radio 4	23/12/2017	Due accuracy	1
Programming	BBC Radio 4	11/09/2017	Offensive language	1
Today	BBC Radio 4	01/08/2017	Due impartiality/bias	1
Today	BBC Radio 4	Various	Due impartiality/bias	1
BBC 5 Live Breakfast	BBC Radio 5 Live	02/02/2018	Race discrimination/offence	1

Investigations List

If Ofcom considers that a broadcaster or service provider may have breached its codes, rules, licence condition or other regulatory requirements, it will start an investigation.

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.

Here are alphabetical lists of new investigations launched between 26 February and 11 March 2018.

Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Service	Transmission date
Catfish	MTV	Various

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Service	Transmission date
Dispatches: Cashing in on Brexit	Channel 4	28 January 2018
Can't Pay? We'll Take It Away!	Channel 5	31 October 2016
Can't Pay? We'll Take It Away!	Channel 5	12 April 2017
News Bulletin	Samaa TV	29 November 2017

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

For information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints on BBC Broadcasting Services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0003/100101/Procedures-for-the-consideration-and-adjudication-of-Fairness-and-Privacy-complaints.pdf

Investigations launched under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed Service
Freesports Ltd	FreeSports
Big City Radio CIC	Big City Radio

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf